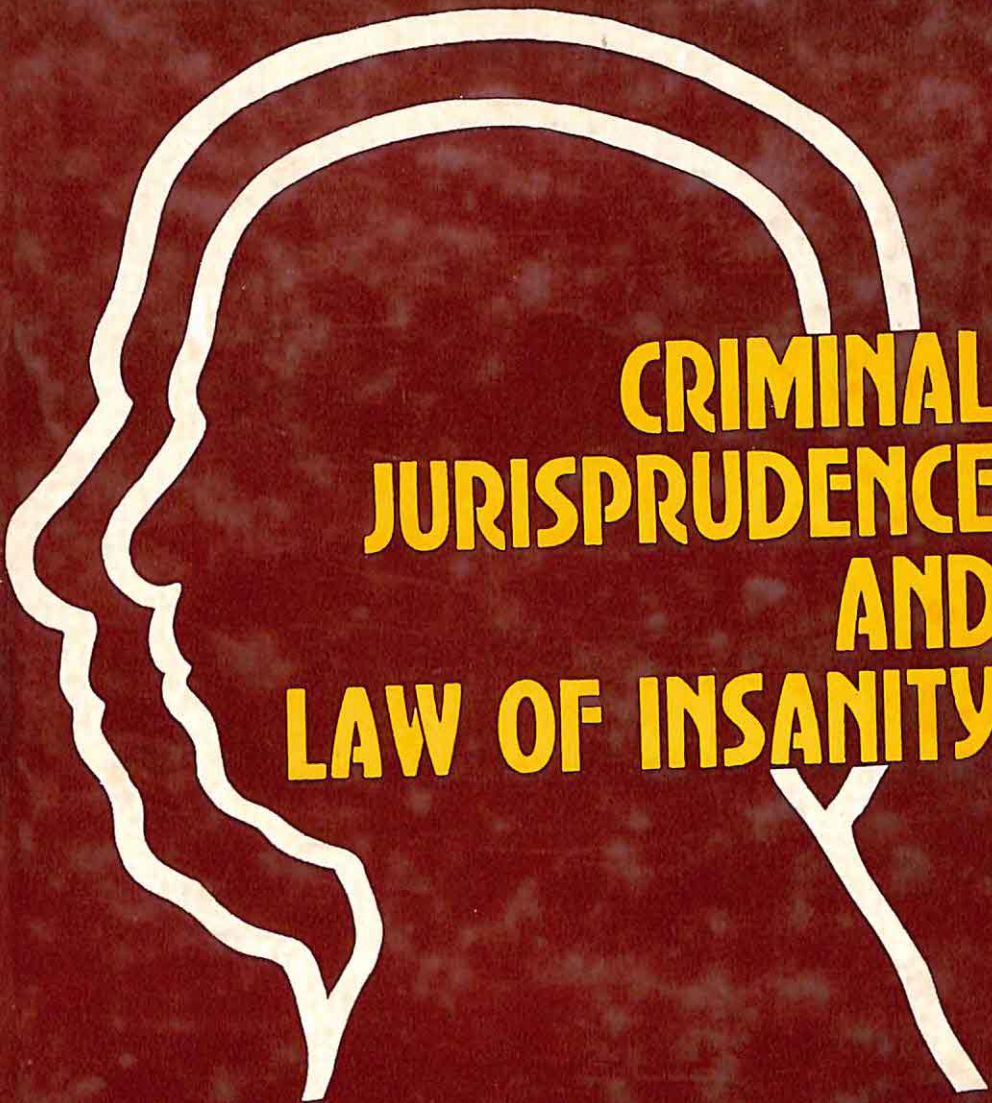

CRIMINAL JURISPRUDENCE AND LAW OF INSANITY

MONIKA MALHOTRA

The Book

The present work explores the law of insanity in Criminal Law in India. It is an attempt towards understanding the problem of insanity in various contexts.

No study is complete unless we look into its historical background. Thus, the law of insanity has been examined in historical perspective in the first chapter, where position of defence of insanity has been examined in ancient, mediaeval and modern India.

The second chapter relates to basis of law of insanity in India. As the law of insanity in India is based on the M'Naghten Rules laid down in the historic case of M'Naghten decided in 1843 in England, therefore, it is essential to have a look at the case in details. This chapter has, therefore, dealt with M'Naghten's case, its criticism and alternatives suggested in lieu of M'Naghten's rules.

The third chapter deals with statutory law of insanity or the law as laid down in the Indian Penal Code. This chapter, in fact, deals with the tests applied by the courts in judging insanity of the offender and also the tests as employed by the medical science in defining insanity which may be described as medical parameters. Insanity is a very wide term and covers a variety of mental disorders. The fourth chapter deals with the various types of insanity that a professional, be it a doctor or a lawyer faces.

When a person raises the defence of insanity, it becomes necessary on his part to prove it in the court of law to get the protection of section 84. The fifth chapter is devoted to burden of proof in cases of insanity, the tools or the instruments employed by the lawyer to prove or disprove insanity and the residual parameters such as conduct and motive etc. The last chapter sums up the conclusions and suggestions.

This outstanding book will be of great use to teachers and scholars of law, advocates and all those interested in the study of the law of insanity in India.

Rs. 125

CRIMINAL JURISPRUDENCE
AND
LAW OF INSANITY

CRIMINAL JURISPRUDENCE AND LAW OF INSANITY

MONIKA MALHOTRA

Foreword by

DR. AMAR SINGH

Department of Laws

Himachal Pradesh University, Shimla

DEEP & DEEP PUBLICATIONS

D-1/24, Rajouri Garden, New Delhi-110027

ISBN 81-7100-091-6

Printed in India at Print India, Mayapuri, New Delhi-110064.
Published by DEEP & DEEP PUBLICATIONS, D-1/24, Rajouri Garden, New Delhi-110027. Phone : 504498, 5435369.

CONTENTS

FOREWORD

The present work seeks to explore the law of insanity in Criminal Law in India. It is an attempt towards understanding the problem of insanity in various contexts.

M'Naghten rules which have been recognised as test of insanity for centuries and forms the basis of Law of Insanity in India have been critically analysed in this work.

The law regarding insanity as laid down in Indian Penal Code or in other words the yardstick to measure insanity as applied by the court on the basis of various decided cases, has also been dealt with in the present work.

Insanity is a word of wider connotation and conveys different meaning in different contexts. Thus, the present study deals with various kinds of insanities with which a professional has to deal.

It also deals with evidential aspect of insanity and the questions relating to burden of proof and tools of proof of insanity in the light of numerous cases decided by Court in India.

The study also contains a few suggestions which have been given keeping in view the overall panorama of the problem.

Shimla

AMAR SINGH

ACKNOWLEDGEMENTS

My sincerest thanks go to Dr. Amar Singh, Department of Laws, Himachal Pradesh University, Shimla, under whose scholarly guidance the present work has been written.

I also express my gratitude to Dr. I.P. Massey, Chairman, Department of Laws, Himachal Pradesh University for his inspiring attitude.

I thank Dr. C.L. Anand, Associate Professor, Department of Laws, Himachal Pradesh University, for all his help and suggestions.

I must thank Sh. B.S. Chandel, who typed this manuscript.

In the last, I thank my parents, friends and colleagues who gave me all timely help I needed.

Shimla

MONIKA MALHOTRA

1

INTRODUCTION

A. PERUSAL OF THE PROBLEM

The subject of insanity[1] is one of the most difficult in the whole range of the law of crimes and has given rise to endless discussions and controversies. An examination of the inner working of that complicated machinery called the human mind is always difficult and the difficulty is greatly enhanced when that mind is not normal. In carrying our investigations into the regions of psychology we have to rely almost entirely on an examination of the working of our own mind, but we can't argue from a sane to an insane mind, and that again with reference to matters which represent not what is common between the two, but what the one excludes and the other includes. Unfortunately the insane can't help us in our investigations. A great deal of difficulty in the treatment of the subject has been due to an anxiety to bring all the different phases of insanity under one common denominator and to apply one common test to all. The mental condition of two insane persons often differs as widely as sanity from insanity, and this greatly enhances the difficulty of laying down general rules which can be satisfactorily applied to all its forms.

Insanity is a term which concerns not only the lawyers but the psychiatrists and psychologists as well. Perhaps the earliest measure which psychiatrists[2] utilised to assess the responsibility was the degree of unreasonableness of the offender's behaviour. A criminal act which seems totally alien to any goal that a rational man would persue has traditionally been

looked upon as a sign of illness, Both psychiatry and the culture as a whole are often willing to assume that the unreasonable man is a sick man and that, that a sick man is not responsible for his action. Depending upon prevailing concepts of mental illness a characterisation of unreasonableness as sickness has often led to an assumption that unreasonable behaviour is determined by external and mysterious agents. In eras when mental illness was approached from a more theological standpoint efforts were made to place the responsibility for sick behaviour on external devils such as incubi or succubi. With the advent of Kraipelinian psychiatry, responsibility for behaviour was placed upon physical desease. Mental illness was thought of as being caused by hereditary or acquired organic impairment. It was the structural defect that was held responsible for such an individual's unreasonable behaviour. Even today reasonable behaviour is often blandly described as mental illness and that mental illness is characterised as a separate and pernicious external agent. However, such a demnological concept of mental illness has never been supported by scientific data and is anti-thetical to an adaptational viewpoint.

With the growth of psycho-analytical knowledge many psychiatrists have sought answers to the degree of man's responsibility in terms of the unconscious component in human behaviour. They agree that if an individual behaves in an unreasonable manner because of motivations that are out of his awareness he can't really help himself and should not be held responsible for his actions. Thus, some psycho-analytical observers have argued that free will exists only to the extent that a person is aware of his motivations. According to this viewpoint, choice is available in inverse proportion to the amount of behaviour or thinking which is dominated by unconscious processes.

Though the unconscious is an important factor in determining behaviour it does not clarify the problem of responsibility or free will because of several reasons. First of all, the degree to which motivation is unconscious is always relative. There is no means of measuring the degree to which a person

is aware of his own motivations and must admit that every act carries with it a mixture of conscious and unconscious elements. Furthermore, the belief that out of awareness forces should mitigate responsibility subtly personifies the unconscious and relegates it to the role of a dangerous and unpredictable external agent. Used in this sense, it is as though the unconscious were a lurking shadow hidden, somewhere in the soul of each individual, waiting only for the opportunity to commit some heinous act. This kind of thinking might lead to regrettable statements such as "It was not I who committed this offensive act but my unconscious mind." Such a motion assumes that a person's unconscious motivations are not a part of the individual in the same sense as his conscious motivations. It is in effect a denial of the existence of the person as an integrated unit.

Another way of looking at the psycho-analytical viewpoint is that an individual should not be held responsible for his actions if he is responding to internalised conflicts or misperceived oppression. While this at a first glance appears to be humanitarian notion, it could in practice grossly discriminate against the offender who is responding to more readily observable stress. Actually, the person whose criminal behaviour is primarily engendered by poverty or persecution may be motivated by forces which are just as powerful and unrelenting as those which motivate the emotionally disturbed offender. Crime may be necessary for survival in either case. If the psychiatrists can be persuaded to argue then an offender should not be held responsible for behaviour which is largely determined by unconscious factors, then perhaps the sociologist should be required to argue that poverty, discrimination and delinquent association would also make the offender non-responsible. Either approach would be compatible with a deterministic viewpoint.

Paradoxically, the psychiatrist who would excuse the criminal from responsibility for his unconscious motivations can't allow the same luxury to those patients he hopes to treat. Psychotherapy requires the patient to adhere to a code of responsibility. Responsibility in this sense may be divorced

from the issue of punishment and can be thought of more accurately as personal accountability.

Freud at one time observed,

"Obviously one must hold oneself responsible for the evil impulses of one's dreams. What else is one to do with them ? Unless the content of the dream (rightly understood) is inspired by alien spirits it is a past of my own being. If I seek to classify the impulses that are present in me according to social standards into good and had I must assume responsibility for both sorts and if in defence I say that what is unknown, unconscious and repressed in one is not my "ego", then I shall not be basing my position upon psycho-analysis."

When psychiatrists enter the court room and testify that certain mentally ill people who are not responsible for their behaviour, they speak against philosophies which many of them are essential to therapeutic effectiveness. This inconsistency or "effort to have it both ways" is confusing and illogical.

The philosophical basis[3] of exemption of insane offenders from criminal liability is perhaps traceable to the functional limitation of the retributive and deterrent theories of punishment which inspired the provisions of the Indian Penal Code.

The retributive theory though understandable as a desire to alleviate the feelings of revenge of the injured person in society generally is pointless and unrealistic when looked from the point of view of insane offender who is unable to make elementary moral discriminations and is thus incapable of adjusting with social demands of behaviours. It is equally clear that such persons are not likely to be deterred from the commission of crime by the threat of punishment.

The function of a test of responsibility in such cases, therefore, becomes primarily "to identify those who must be regarded as ineligible for the process of criminal justice with their inherent punitive ingredients and who, therefore, must be

conceived solely as the recepient of care; custody and therapy. With the development of psychiatry and behavioural sciences, correctional philosophy has been cautiously progressing towards emphasis on rehabilitation and reform as well as social protection, rather than retribution and punishment. This shift in emphasis from condemnatory punitive aspect of criminal conviction to preventive rehabilitative standpoint makes the question of determining criminal responsibility less urgent, though not superfluous. For the determination of responsibility, it becomes necessary to ascertain before reaching the dispositional stage whether or not the defendant has fulfilled the definitional element of the crime charged, known as *mens rea* which is a composite of various attitudes and frames of mind.

The mind, a superior and distinguished gift of nature to mankind, plays a predominant role in all human actions and behaviour. It is, therefore, natural that while considering and assessing the value and nature of any human action emphasis is laid on the working of the mental faculty of the person, whose act is judged, because nothing undermines general respect for law more than a feeling that the law is arbitrary in assigning guilt. Therefore, a multilateral examination of the State of mind leading to insanity becomes important.

The defence of insanity, however, can't be understood in terms of foresight of consequence alone. The concept of foresight has become part of criminal theory largely as a result of uncritical adoption of the classical theories of Bentham and Austin on the nature of "act" and "intention" formulated on the then predominant theories of psychology and moral philosophy. Later writers in criminal law have neglected to revise their conclusions in the light of modern development in psychology and philosophy. Contemporary philosophers such as Gilbert Ryle, G.E.M. Anscombe and Stuart Hampshire have shown that intention is not too simple a notion to be adequately expressed merely in terms of foresight and desire but is a very complex one which stands for very difficult ideas in different contexts. The attempt to define blame worthiness in terms of foresight leads to superficiality

and is inconsistent with psychological reality.

The M'Naghten Rules, which are the continuing measure of insanity incorporate a classical, scholastic, intellectual thought which is a century old. Attempts at modernisation have, no doubt, led to some modified and substitute roles of criminal responsibility, but the stature and significance of the M'Naghten Rules has impeded efforts at creative reconstruction. Even when scientific insight has exposed and partially clarified the complex web of psychological and physical states underlying the insanity concept adherence to the illusory simplicity and precision of the M'Naghten Rules to the belief that complexities can be reduced to a formula—has tended block legal change.

The problem of insanity assumes different and even more significant proportions in a heterogeneous country like India where mass illiteracy, ignorance and economic differentiation of the people render any uniform test of culpability difficult. The common law tradition of judicial innovation is helping to soften the rigidity of the M'Naghten Rules in the U.K. but the statutory limitation of the Penal Code provision of 1860 make such innovative adjustments in India difficult.

Thus, the defence of insanity in Indian criminal law has been examined in following aspect in this work.

No study is complete unless we look into its historical background. Thus, the law of insanity has been examined in historical perspective in the later part of the first chapter, where position of defence of insanity has been examined in ancient, mediaeval and modern India.

The second chapter relates to basis of law of insanity in India. As the law of insanity in India is based on the M'Naghten Rules laid down in the historic case of M'Naghten decided in 1843 in England, therefore, it is essential to have a look at the case in details. This chapter has, therefore, dealt with M'Naghten's case, its criticism and alternatives suggested in lieu of M'Naghten's rules.

The third chapter deals with statutory law of insanity or the law as laid down in the Indian Penal Code. This chapter, in fact, deals with the tests applied by the courts in judging insanity of the offender and also the tests as employed by the medical science in defining insanity which may be described as medical parameters. Insanity is a very vide term and covers a variety of mental disorders. The fourth chapter deals with the various types of insanity that a professional, be it a doctor or a lawyer faces.

When a person raises the defence of insanity, it becomes necessary on his part to prove it in the court of law to get the protection of section 84. The fifth chapter is devoted to burden of proof in cases of insanity, the tools or the instruments employed by the lawyer to prove or disprove insanity and the residual parameters such as conduct and motive etc.

The last chapter sums up the conclusions and suggestions.

B. LAW OF INSANITY IN HISTORICAL PERSPECTIVE

1. Insanity in Ancient India

Although the Indian, literature is full of ideas on many topics of criminal law which are considered while awarding punishment, it is very difficult to find any direct reference to the plea of insanity as a defence. However, whatever material was available may be presented here.

In ancient India, there was no difference between moral and legal breaches of duty. According to Hindu Philosophy, whoever violated a duty had to bear the consequences of such violation law did not take into account the voluntary or involuntary nature of the act. It was presumed that the order of Nature is self-operative against every breach or violation.[4]

Thus, it is immaterial whether the wrong is done in sanity or insanity, by an adult or an infant, in normal or abnormal circumstances, the doer has to suffer for it. Further, one may suffer for his misdeed either in the current life in subsequent lives as his fate decrees. The principle was thus of

absolute liability. The complicated theories of fate, Karma (action), regeneration and *sanskar* appear to have played an important role in the formulation of the theory of absolute liability. However, one way of amending the offender's misdeeds was undergoing proper atonement or penance known as '*prayaschita*'. Regarding the liability of children we find two schools of thought.[5] One school of thought completely absolves a child below five years of age from liability for any sin or crime, but for children between the age group of five to ten years, their elders have to atone. The other school does not absolve the child of five years of age or less but provides that they are not liable for full *prayaschita* (penance) for the sin.

According to Karma (action) theory a man is free to act, and the Vedic Rishis appraised the moral value of act with reference to the intention of the doer. Thus, it becomes clear that an act done with will or intention was treated on a different footing than the one performed under compulsion. Let us try to understand the meaning of compulsion. Rishi Vasistha says :

"O varna; the unintentional sin is not due to the पापवृत्ति : of self : its भ्रुति : its originating cause, is wine, anger, gambling or आचिति : (ignorance)."

The external compulsions are physical servitudes, necessities, passions and any other circumstance or condition which clouds the will, or deprives it of its freedom. An act done under compulsion is not the same as it would have been, if done free of those circumstances or conditions. Even in Mahabharata,[6] we find that an unintentional act was not regarded as punishable or to bear any consequences. Thus, when Draupadi was lost by Yudhisthira as a part of a stake in a gambling game and was exposed to innumerable indignities, Vikarna who was Duryodhan's brother raised three points on behalf of Draupadi of which one was that her being pledged by Yudhisthira was invalid in that it was made in the frenzy of gambling.

Thus, it is very clear that frenzy or other conditions leading to abnormality of mind were recognised grounds for changing attitudes towards a wrongful human act.

The ancient rishis have always paid much attention to the circumstances and conditions[7] in which a sin is committed and also showed consideration for the personality development[8] of the sinner while allotting punishment of penance for him.

According to Manu[9]

क्षन्तव्यं प्रभूणा नित्यं क्षिपतां कार्यिणां नृणाम् ।
बाल वृद्धातुरणाच कुर्वता हितमात्मन: ।।

Meaning thereby that a child and an insane person, among others, is to be forgiven and not punished for a crime.

Yajnavalkya is more specific in describing the conditions which distort the working of the mind and ordains that no punishment be imposed upon a person who has committed an offence under these conditions. He observes :

मोहमदादिभिरदण्डनम् ।
मोहश्चित्त वैकल्य मदो मद्यादि जनिता विकृतावस्था
आदिग्रहा दुन्मादादिसग्रंह: ।।

Thus, it is clear that whatever literature is available in ancient Indian Law, it does not make clear whether or not the insane person is fully absolved of his criminal liability. The theory of absolute liability and the concept of sin did not make any concession for the acts done by a wrong doer. However, it is clear that a great consideration was shown in the ancient literature for the purposes of allotment of 'danda' (punishment) or 'prayschita' (penance) to an insane violation of social or moral order.

2. Insanity in Mediaeval India

Regarding insanity in mediaeval India, not much material was available which could be summarised here, therefore, it is

better to see what is the position of defence of insanity in modern India.

3. Insanity in Modern India

When the East India Company[10] was appointed by the Mughal Emperor, the 'Diwan' of Bengal in 1765, the company bacame entitled to or rather responsible to run the civil or Diwanl Courts in Bengal in addition to its tax-collecting functions. At first, the company left the courts alone, but it soon changed its attitude as it came to realise that for its tax-collection function a proper system of courts was essential. Gradually the company also took over the criminal or 'Nizamat' courts in Bengal. As the company came to administer territories outside Bengal it took over the judicial system there too. To begin with the East India Company continued to apply the Muslim law of crimes. In order to know the law, Muslim law officers were appointed to courts to advise them on law. But the company soon concluded that the Mohammedan law of crimes was too archaic and barbarous and so set about to modernise it.

In Mohammedan law no responsibility appears to be attached to insane or imbecile persons. Their legal capacity, except as to acts done in lucid intervals, is affected in the same way as that of an infant without determination.[11] The law holds such persons to be incapable of understanding and so it gives them an exemption from liability. As in the case of minority, insanity also should be pleaded on the same day, otherwise there will be no favourable presumption. This is subject to conditions that the criminal should take an oath, and his mental condition should not be incompatible with his notorious madness.[12] Abu Yusuf taking into consideration such lack of understanding said that, "they had can't be imposed on the accused after his confession, unless it is made clear that he is not insane, or mentally troubled. If he is free from such deficiency, he should then be submitted to the legal punishment.[13] It is imperative therefore that the qadi assumed himself of the sanity of the criminal before pronouncing judgment.

However, at the same time some attempts were made to codify the law of insanity in India. Mr. J.E.D. Bethune, advocated in 1848, a theory similar to that of "absolute liability" ; for criminal acts of insane persons though on different grounds. He observed : "The plea of lunacy will be wholly disallowed and it would be left to the prerogative of mercy to pardon those unhappy persons who alone are really free from guilt.[14] In Mr. Bethune's time in India no proper law either to judge the criminal liability or to treat an acquitted lunatic existed. However, some stray cases are available. Thus, in *Government* v. *Bhuwan Singh*[15] a person was convicted of wounding six persons, and a plea of insanity having been overruled, he was sentenced to imprisonment for life.

In cases of homicide, maiming and wounding, suspicion of temporary derangement was sufficient to bar kisas and diyat but did not preclude the imprisonment of the offender to prevent danger to society. The discretionary power of the Nizamat Adalat, in similar cases was subsequently enlarged by section 7 of Regulation IV of 1822. The rule contained in Section 4, Regulation XVII, 1817, empowering two or more judges of the Nizamat Adalat to convict and punish a prisoner charged with a criminal offence, in opposition to the acquittal of their law officers, was extended to cases in which a futwa of the law officers may declare the legal punishment barred by doubts of the prisoner's insanity when he committed the act charged by Section 7 of Regulation IV of 1822. Section 4 of this regulation describes how the Judges are to proceed, in the case of a prisoner who, subsequent to the perpetration of a crime and prior to conviction may exhibit symptoms of derangement.

In another case *Arjoon Manjhee* v. *Lukhun Manjhee*,[16] the prisoner was proved to have beaten a girl on the head with a stone, which caused her death. No malice being proved, or probable cause assigned, and the prisoner becoming mad shortly after, the court attributed the act to insanity and directed his detention.

As there was no law to judge the criminal liability of an insane person the Calcutta Court of Nizamat Adalat, by 1845 proposed that a law be passed to empower the Sessions Judge and the Nizamat Adalat to provide for the custody of the acquitted persons until certified for their recovery. The draft was prepared on the model of the English Statutes and was passed as Act IV of 1849 containing seven sections in all.

Its preamble neatly sums up the purpose of the act :

"Whereas it is expedient to declare what unsoundness of mind excuses the commission of criminal acts, and to provide for the safe custody of persons found to have committed such acts, but acquitted by reason of unsoundness of mind, it is enacted as follows :

No person who does an act which if done by a person of unsound mind, is an offence, shall be acquittal of such offence for unsoundness of mind, unless the court or jury as the case may be, in which, according to the constitution of the court, the power of conviction or acquitted is vested, shall find that by reason of unsoundness of mind, not wilfully caused by himself, he was unconscious and incapable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land."

Before the passing of the above act, the law as to determination of guilt of an insane person was as uncertain and chaotic in this country as it was in England, where from law and procedure were being imported and infused through the courts of the East India Company. However, attempts were afoot to lay down provisions relating to the criminal acts done by insane persons. In 1837, Mr. Macaulay had drafted a code wherein he had provided as follows :

Section 66

Nothing is an offence which is done by a person in a state of idiocy.

Section 67

Nothing is an offence which is done by a person in consequence of being mad or delirious at the time of doing it.

It is clear that Section 67 granted to a lunatic an immunity extending as far as anything claimed by medical theorists.[17] This was felt to be too favourable to an offender, therefore, many suggestions and amendments were advanced to make the test of criminality of an insane person more precise and direct. However, no acceptable standards could be laid down until the decision of the M'Naghten's case which took place on the subject in England. The same rules became the basis of the present codified law on insanity in this country.

Notes and References

1. Shamsul Huda, Principles of the Law of Crimes in British India, pp. 272-73 (1982).
2. Seymour L. Hallack, Psychiatry and the Dilemmas of Crime, pp. 209-10 (1967).
3. Defence of Insanity in Indian Criminal Law by K.M. Sharma, JILI, Vol. 7. 1965, p. 325.
4. The History of Hindu Law by Radha Binod Paul, p. 169 (1958).
5. Kane, Historty of Dharamshastra, p. 79 (1953).
6. Mahabharata, II 65, pp. 19-24.
7. Manusmriti VIII, p. 326.
8. Yajnavalkyasmriti, III, p. 293.
9. Manu Smriti, VIII, p. 312.
10. Insanity under the I.P.C., A Plea for change by Boparai CRI, L.J. 1976, p. 9.
11. Abdul Rahim, Muhammadan Jurisprudence, 244 (1958).
12. Minhaj-El-Talibdin, 399.
13. Abu Yusuf, Al-iqrar, quoted in Qadri, Islamic Jurisprudence in the Modern World, 270, (1963).
14. Minute of Mr. Bethune, dated June 10, 1848, Indian Legislative Consultations.
15. 1st April, 1818, I.N.A. Rep. 357.
16. 1st May, 1823, 2 N.A. Rep. 260.
17. Mayne, Criminal Law of India, 1864 (4th Edition).

2

JURISPRUDENTIAL BASIS OF THE LAW OF INSANITY

The law of Insanity in India is based on the M'Naghten Rules laid down in the famous case of M'Naghten decided in 1843. Though M'Naghten Rules have aroused great criticism in present times and have faced attacks from various quarters, still it remains an authoritative statement of law on insanity in England. Since Indian law of insanity is based on these rules, therefore, it becomes necessary to have a look at the case in detail.

A. THE M'NAGHTEN'S CASE

Daniel M'Naghten was a paranoic who believed himself to be persecuted by the Tories and to have been goaded beyond endurance to commit alleged murder. Suffering from delusions of persecution, M'Naghten had determined to kill Sir Robert Peel but killed Edward Drummond by mistake. He was tried and acquitted on the ground of insanity. His acquittal evoked a public clamour. Many people believed that his story of delusion was a concoction, and the murder was a pure political assassination. It resulted in a debate in the House of Lords with a view to "strengthening the law". And it was induced to employ the unusual procedure of addressing a series of questions to the fifteen judges of House of Lords in England to ascertain the law on the subject.

(i) Underlying Principles in the M'Naghten's Case

The replies given by the judges may be summed up in the

following propositions[1] :

(i) Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to the satisfaction of a jury.

(ii) To establish a defence on the ground of insanity, it must be clearly proved that, at the time of commiting the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.

(iii) As to his knowledge of the wrongfulness of the act, the judges said : 'If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of land he is punishable.

(iv) Where a person under an insane delusion as to the existing facts commits an offence in consequence thereof, the judges indicates that the answer must depend on the nature of delusion, but making the assumption that he labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment.

However, it should be emphasised here that, for a defence of insane delusion, the act must have a direct connection with the delusion. That is to say, the conduct of the accused must have been actuated by his insane delusion. Thus, in a Scotland case,[2] a man dreaming that he was struggling with a wild beast,

killed his baby, was discharged on the same grounds.

Since the time M'Naghten's answers were promulgated, the courts in England have adopted the following rules :

(a) that where insanity is pleaded the onus of proof of insanity rests upon the defence; and

(b) that though the defendant does not plead insanity, the prosecution has the choice to say that evidence before the court does establish insanity within the M'Naghten Rules; and

(c) that in case of charge of murder the defence pleads and adduce evidence of diminished responsibility the prosecution may call for evidence in order to establish insanity; and

(d) that when the prosecution do so, it must prove it beyond reasonable doubt; and

(e) that where the defence lead insanity it is open to the prosecution to call rebuting evidence whereby to establish diminished responsibility. But now, by virtue of the Criminal Procedure (Insanity) Act, 1964, Section 6, if a person charged with murder argues that he is not guilty either, (i) by reason of insanity or (ii) by reason of diminished responsibility the prosecution is allowed to adduce or elicit evidence tending to prove the other of these contentions.

(f) But it would seem that, except for the above mentioned intances, the prosecution may not lead insanity against the accused.

(2) Explanation of the Rules

The important part of the rules is mentioned in Rule (ii), on p. 23. The first part of this, "not to know the nature and quality of the act", means that the accused must be insane in every possible sense of the word. The second part, "not to know that what he was doing was wrong" is critical for the following reasons. *Firstly*, it has been argued, that "know"

means to "appreciate" or to "comprehend" or to realise in its full meaning. *Secondly*, it is not clear whether "wrong" means legal or moral wrong.

It is necessary for the accused to know that what he was doing was contrary to law, or that it was contrary to the moral notions and law? *Thirdly*, if the accused was fully aware of what he is doing but is unable to prevent himself because of some emotional disorder rather than a mental defect, the rule must be extended to cover that.

The M'Naghten rules are still received in courts as the binding authority on the defence of insanity in England. Their meaning has been explained in a number of cases. In 1916, the Court of Criminal Appeal explained their meaning in the case of *R.* v. *Codere*.[3] In this case the court refused to accept the subjective test and adopted the test of insanity to be applied by an ordinary reasonable man, i.e., whether the act was right or wrong from the point of view of a reasonable man. The court laid down that once the appellant knew that the act was wrong in law, it was assumed that he was conscious of it and therefore, he knew the nature and quality of the act, and hence was guilty of murder.

Briefly it may be stated that in *R.* v. *Codere*, the court laid down :

(i) that an objective moral test must be applied in cases where insanity is pleaded, the test being the ordinary standard adopted by reasonable man;

(ii) that an act is "wrong" according to that standard if it is punishable by law;

(iii) that the accused must be deemed to know he was doing what was wrong, if he was aware that the act was one which was so punishable; and

(iv) that the words 'nature' and 'quality' do not refer to the moral aspects of what the offender was doing but solely to the physical facts. It would seem proper to add that the jury, before they can find the accused

guilty, must also be satisfied : (a) that his conduct was voluntary, and (b) that he realised the probable consequences of his conduct.

As to the question whether 'wrong' means "legal" or "moral" wrong we find an exposition in the case of *R.* v. *Windle*.[4] In this case the accused killed his wife by giving a fatal dose of aspirin. He admitted that he had done so, and said that he supposed, he would be hanged for it. However, he pleaded insanity in his defence. The court of criminal Appeal in this case held that the 'wrong' in M'Naghten rules means contrary to law and not wrong according to the opinion of one man or of a number of people on the question of whether a particular act might or might not be justified.

Defect of Reason through Disease of Mind

According to Kenny,[5] the exact connotation of the words disease of the mind did not attract the attention of the courts for over 100 years. The reason being that the word 'disease' was regarded as a medical term both in professional and lay circles and denoted a pathological variation, the complex interactions of which are denoted by such words as thought, memory, reason, imagination, intention, purpose, all of which conceptions are spoken of as comprised in the term 'mind' is a generic abstraction which can't have any physical existence at all. Therefore, it can't suffer from any 'disease' unless the term 'disease' be used in a purely representative sense, to indicate either,

(a) that a person's thoughts or intentions are objectionable, or

(b) that they are the resultant of a brain which is abnormal either congenially or through damage caused by contusion or disease.

In spite of these basic differences the words 'mind' and 'brain' have often been used synonymously when precision of speech is not important. However, two modern cases present difficulties.

In *R.* v. *Charlson*,[6] the indictment contained three courts charging the prisoner under Sections 11, 18 and 20 respectively of the "Offences against the Persons Act, 1861", by inflicting grievous bodily harm upon his son, aged 10, whom he had hit on the head with a mallet and thrown out of the window into a river below. Evidence that he was a kind and indulgent father and that there was no disagreement or ill-feeling, even temporary between them was accepted. There was also the medical evidence and history of ill health of the prisoner and his family members and it was suspected that he might be suffering from a cerebral tumour the effect of which would be to make him liable to an outburst of impulsive violence over which he would have no control. The accused did not raise the plea of insanity but alleged that his act was not his conscious act. He was acquitted of all the three charges.

In *R.* v. *Kemp*,[7] the accused was charged with causing grievous bodily harm to his wife. He suffered from arteriosclerosis which had not given rise to general mental trouble but caused temporary loss of consciousness during which state the attack was made. In this case it was conceded that everything (in the third and fourth answers in M'Naghten's case) applied here except for "disease of the mind". The law is not concerned with the brain but with the 'mind', in the sense that "mind" is ordinarily used for the mental faculties of reason, memory and understanding. The condition of the brain is irrelevant and so is the question of whether the condition of the mind is curable, transitory or permanent. There is no warranty for introducing those considerations into the definition in the M'Naghten Rules. Temporary insanity is sufficient to satisfy them. It does not matter whether it is curable and permanent or not. The primary thing that has to be looked for is the defect of reason. "Disease of the mind" is there for some purpose, obviously, but the prime thing is to determine what is admitted here, namely, whether or not there is a defeat of reason. The words "from the disease of mind" were put in for the purpose of limiting the effect of the words "defect of reason". A defect of reason is by itself enough to make the act irrational and therefore, exclude responsibility in law. The words ensure that unless the defect is due to a diseased mind

and not simply to an untrained one there is insanity within the meaning of the Rule.

Hardening of the arteries is a disease which is shown on the evidence to be capable of affecting on the mind in such a way as to cause a defect, temporarily or permanently, of its reasoning, understanding and so on, and so is a disease which comes within the meaning of the Rules. So the accused was held guilty and insane.

B. CRITICISM OF THE M'NAGHTEN'S RULES

The M'Naghten Rules have been criticised chiefly as being too restrictive. They do not let out people who have insane delusions not related to legal guilt. The delusion indicating psychosis[8] is sufficient. Same is the case of persons who are subject to insane impulse or who are psychotically depressed.

The assumption of the rule that a person, who intellectually apprehends the distinction between the right and wrong of a given conduct must be held criminally liable, was soon attacked, not only by eminent lawyers but also by medical scientists on the ground that insanity does not only or primarily affect the cognitive faculties, but affects the whole personality of the patient, including both the will and the emotions.

In the light of modern psychiatric developments, criminological science and changing conceptions of guilt, the criticism and discussion have assumed great importance and significance in recent years.

According to Cross and Jones[9] M'Naghten Rules may be criticised on five counts.

Firstly, the rule concerning burden of proof is anomalous. In most other criminal cases, the accused has to adduce evidence just sufficient to raise a particular defence, and there seems to be no reason why someone who pleads insanity should be any worse off.

Secondly, it may be argued that the word "wrong" should be interpreted to mean morally wrong in accordance with the opinion of the High Court of Australia. This is, however, a very controversial point. The decision in Windle's case to the effect that "wrong" in the M'Naghten's rule means legal wrong has been supported extra-judicially by Sir Patric Devlin in the following words :

"I do not see how an accused man can be heard to say that he knew he was doing an act which he knew to be contrary to law, and yet that he is entitled to be acquitted; at the hands of the law. Guilt, whether in relation to the M'Naghten's Rules, or another rules, means responsibility in law."

Thirdly, it is said that the M'Naghten's rules are based on the outmoded theory of partial insanity. A lawyer can't very well pronounce on the validity of this criticism, but partial insanity is regarded as a possibility in several other branches of the law, where M'Naghten rules are not applied.

The *fourth* and *fifth* criticisms of the M'Naghten rules are based on the fact that they make no allowance for the so called "irresistible impulses" and any form of mental disorder which is not of the most acute form.

As regards the first point, it may be said that it should be a defence for a person to show that, although he was aware of the nature and quality of his act, and knew it to be wrong; he found, owing to insanity, that it was difficult, if not impossible to prevent himself from doing what he did. If the medical evidence points to no other possible conclusion, this suggestion appears to be sound in theory for, if a sane person is overcome by illness so that his conduct is involuntary he will not be criminally liable. However, there are practical difficulties in allowing such a defence and what was the attitude of courts till recently may be summed up in the following remarks of Lord Hewart[10] C.J. in the case of Kopsch, in which it was urged that the trial judge should have directed the jury with regard to irresistible impulse. "It is a fantastic theory which if it were to become part of our criminal law, would be merely

subversive. It is not yet part of the criminal law and it is to be hoped that the time is far distant when it will be made so."

But the Infanticide Act, 1922, re-enacted in 1938, had already shown that the legislator was prepared to depart from the M'Naghten rules by providing that if a mother killed her newly born baby while she was suffering from the effects of child birth or lactation she should not be convicted of murder if the balance of her mind was disturbed. Moreover, a committee presided over by Lord Atkin recommended that irresistible impulse due to insanity should be a defence as long as 1924 and the matter was exhaustively considered by the Royal Commission on Capital Punishment whose recommendations were published in 1953. Allowance is made for irresistible impulse in a manner of Commonwealth and North American jurisdictions.

It is also not clear that the M'Naghten rules apply to cases in which the mental development of the accused is incomplete, and the Royal Commission on Capital Punishment recommended that it should be made plain that they do. On the general question of the continued application of the M'Naghten rules the majority of the Commission have favoured total abolition of the M'Naghten rules.

Professor Sheldon Gleuck[11] has observed that the M'Naghten rules proceed upon the following questionable assumptions of an outworn era in psychiatry,

(1) that lack of knowledge of the "nature or quality" of an act or incapacity to know right from wrong, is the exclusive or most important symptom of mental disorder;

(2) that such knowledge is the sole instigator and guide of conduct, or at least the most important element therein and consequently should be the sole criterion of responsibility; and

(3) that the capacity of knowing right from wrong can be completely intact and can function perfectly even

though a defendant be otherwise demonstrably of disordered mind.

The M'Naghten rules have also been attacked by U.S. Supreme Court. Justice Tobriner of Supreme Court of California speaking for the majority in case of *California* v. *Drew*[12] has observed highlighting the deficiency of M'Naghten Rules saying that principal defect of the rules is exclusive focus upon the cognitive capacity of the defendant, an outgrowth of the then current psychological theory under which the mind was divided into separate independent compartments, one of which could be discarded without affecting the others. "In view of the courts judgment the continuing inadequacy of M'Naghten can't be cured by further attempts to interpret language dating from a different era of psychological thought, nor by the creation of additional concepts designed to evade the limitation of M'Naghten." Justice Tobriner further said that it was time to "recast" M'Naghten in modern language, taking account of the advances in psychological knowledge and changes in legal thought. The definition of mental incapacity in Section 4.01 of the American Law Institutes Model Penal Code, "restates M'Naghten in language consonant with current legal and psychological thought." It says that, "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."

According to Taylor,[13] the principal medical criticism levelled against the rules are founded upon two points : the first is that the rules made no provision for the effect upon the conduct of pathological disturbances of emotions, as opposed to disturbances of reason or knowledge, and the second, that the diagnosis of any kind of insanity is a complex task and can't be finally entrusted to a panel of laymen the jury.

White[14] one of the psychiatrist critics of the criminal law while criticising M'Naghten Rules has observed, "Here, it (Psychiatry) meets with antiquated outworn, archaic ways of thinking that have been crystallised in the statutory law. The

right and wrong test represent antiquated and outworn medical and ethical concepts, responsibility carried with it a meta-physical implication the remedies (especially punishment) upon which the law seems to repose its faith are hangovers, as it were, from old theological and moral ideas that have survived their period of usefulness in this twentieth century civilisation. M'Naghten Rules are incomprehensible as they do not refer to the data and theories with which the psychiatrists deal. They express a psychology and ethics which scientific psychiatrists reject. Critics also maintain that the first "Curious test" of insanity, the so-called 'wild beast test' marks back to language employed by Bracton in the thirteenth century. The "right and wrong" test is a superstition, and the psychiatrists do not believe it helps to call an act bad and that such knowledge of morality is not an important factor in deciding a question of mental illness.

Another ground of attack[15] on M'Naghten Rules is regarding the interpretation of the words 'nature' and 'quality', the chief question being whether they are synonyms. It has been said that in using the language 'Nature and Quality' the judges were only dealing with the physical character of the act, and were not intending to distinguish between the physical and moral aspects of the act. "It may be argued that the judges who formulated the M'Naghten Rules could not have intended two different words to mean exactly the same thing." But for the most judges elucidation has largely been confined to the substitution of synonyms.

According to *Friedmann*,[16] a person must be seen in its entirety and the faculty of reason which is only one element in that personality is not the sole determinant of his conduct. There is far less agreement on the alternative. It is almost accepted by everyone that some persons, who are perfectly capable of distinguishing between right and wrong, are yet driven to commit a criminal act, by forces outside their control. This makes it difficult to hold them criminally responsible in a legal system that basis criminal liability on personal responsibility. The M'Naghten rules not only greatly oversimplify the problem of criminal responsibility by the right and wrong test,

but they also have nothing between black and white, no stage between responsibility and irresponsibility.

The development in modern psychiatry which between the fully normal and the fully abnormal person, recognises an infinite variety of shades of disturbances lessening, to a varying degree, the emotional powers and capacities of self-control rather than intellectual discernment, calls for a corresponding elasticity in the legal approach to the problem of responsibility. But this very development makes it obviously very difficult to devise precise legal formulae, by either statutory or judicial legislation.

Dr. Richard Moran[16a] Professor of Sociology in Massachusetts in his Book, "The Insanity Defense of Daniel M'Naghten" has observed that though M'Naghten might well have been persecuted by the Tories and that if he were, he was not therefore deluded. The time has come to challenge the conventional wisdom concerning the M'Naghten's case. According to this author the judgment in M'Naghten's case far from representing an enlightened humanitarian view of Criminal responsibility by a judge and jury concerned with the welfare of a mentally ill defendant, the verdict was mainly the result of political considerations. If we consider the liability of M'Naghten under the present law, his case would have been covered by Section 2 of the Homicide Act, 1957 which deals with the principle of diminished responsibility.

In a nutshell, we can say that it would not be wrong to say that the M'Naghten rules are too restrictive because they take into account only one kind of insanity, i.e., where a person is unable to distinguish between right and wrong. But sometimes a person although knowing the difference between right and wrong, is impelled to do that act. Morever, the word wrong should be taken to mean morally wrong as contrary to law and legal wrong means the same thing. M'Naghten Rules look upon the mind as composed of separate compartments, one of which can be diseased without any effect upon the other but it is not so.

C. SUGGESTED ALTERNATIVES TO THE M'NAGHTEN'S RULES

To quote Sheldon Gleuck,[17] "Not only is the famous test vague and uncertain," and an emblem of outworn medical notions, "but even from the point of view of assumedly separate insulated mental functions, it is too narrow a measure of irresponsibility." It ignores "those disorders that manifest themselves largely in disturbances of the impulsive and affected aspects of mental life." Hence, since 1843 much discussion has taken place as to the effect of these latter forms of insanity in conferring immunity from criminal liability.

(1) The Irresistible Impulse

The major corollary of the criticism of the Rules has long been expressed in the hypothesis of 'irresistible impulse'. With accompanying demands for legal recognition of it. As stated by Weyer[18] in sixteenth century, that hypothesis did not coincide with the rise of modern psychiatry. The psychological foundations of the present controversy was laid down by certain French physicians in the early nineteenth century. Pinel one of the modern pioneers of psychiatry, diagnosed cases of mania without delerium and reported that he found no loss in functioning of perception or intelligence, but did find a compulsion to violence, even homicide. This theory was first repudiated in England, and Dr. Burrows characterised it as both absurd and dangerous, absurd because he who can perpetuated such acts, and yet be, in possession of all these faculties is neither in a delerium nor mad. But the 'irresistible impulse' hypothesis gained ground, aided in England by Prichard's diagnosis of "moral insanity", which he reported, left the reasoning faculties unimpaired and in the United States by Ray's similar views. Thus shortly after the M'Naghten Rules were published, and long before the rise of modern psychiatry, it was insisted that the test of irresponsibility should not be whether he had knowledge of consequences of his act or whether the individual be conscious of right or wrong but whether he can properly control his action.

The work of Maudsley[19] was influential in this regard and he presented the hypothesis of "impulsive insanity" so persuasively as to enlist wide support.

According to Gurpal Singh,[20] M'Naghten Rules on which Section 84 of the I.P.C. is based deals with insanity affecting cognitive faculties of mind, leaving no margin for the unsoundness of mind affecting emotions and will. These rules do not cover the irresistible impulse test. This criticism has got a legal as well as a medical basis.

(*a*) *Legal Basis*

It is well recognised in every civilised penal system of the world that "freedom of will" is essential to criminal responsibility. The proposition involves two points. One is that without volition there is not act and the second is that volition is necessary element of every crime. When the will of person is affected it means that his act is not voluntary, that it is not a crime and he is not responsible for it, and consequently he should not be punished.

(*b*) *Medical Basis*

The M'Naghten Rules are based on an outworn theory of medical science, that was prevalent at the time when these rules were framed in 1843. According to this theory, mind can be divided into a number of compartments of which one or more may be diseased without affecting the others. However, since 1843 medical views regarding insanity have changed, and the psychiatrists now agree that mind is one whole, a unity and that a person can't be mentally and emotionally diseased without his total personality being affected. The courts have, however, continued to use the standard of over 100 years ago. There is a common agreement among the psychiatrists as to the proposition that mental unsoundness results in the impulses which are largely or wholly uncontrollable. Professors of medical jurisprudence and some eminent legal authorities are convinced that even though a person may know the nature and quality of his act and that it

is morally wrong or contrary to law, yet he may be incapable of restraining himself from doing it. His power of choosing between right and wrong might have been impaired, his freedom of will might have been destroyed for the time being, and if the will is destroyed by a mental disease, the act of such person can't be an offence. The act of such a person can't be described as voluntary or to be the result of a volition. That is the reason that they advocated that irresistible impulse should be recognised as a defence to criminal responsibility by the courts.

The question asked from the medical witness should not be, "was the accused incapable of knowing that his act was right or wrong, but was this man sufficiently sane to be regarded as a normal human being capable of deliberate choice between the commission of the prohibited act and refraining from the commission of the prohibited act ?"

There is ample authority to support the doctrine of irresistible impulse. According to Taylor,[21] will is that mental power which can restrain intention (or) malice from issuing an action. In the insane person, the will, the power of choice to do or not to do a thing is destroyed by mental disease. Since it is illogical to punish a man for an act which is beyond his control, the insane ought not to be punished for his act." Modi[22] after examining the Indian cases on irresistible impulse and right and wrong test laid down in section 84 observed, "The application of these legal tests in such cases is not very sound as much as there is a form of insanity which affects the will and not the cognition. Although the patient is able to realise the difference between right and wrong, yet he commits the crime being impelled by an irresistible impulse induced by a diseased mind. Such a condition should be recognised as a sufficient ground of exemption from criminal liability. Stephen thought that this defence of irresistible impulse was included in the M'Naghten rules and interpreted them in that sense but actually such defence was never thought of the judges who framed these famous rules.

(c) *Irresistible Impulse under English Law*

The whole law of insanity in England is represented by the M'Naghten Rules thereby making no allowance for the defence of irresistible impulse. The English courts have continuously rejected this doctrine. It was rejected in *R.* v. *Haynes*[23] and *R.* v. *Burton*.[24] In 1878 a bill proposing to recognise irresistible impulse as a defence to criminal liability was introduced in the Parliament. But the bill was rejected on account of stiff opposition shown by the commoners and the Lords. It was not included in the Draft Code of 1879, on the ground that the test proposed for distinguishing between such a state of mind and criminal motive, the offspring of revenge hatred or ungoverned passion was on the whole not practicable or safe. It was again rejected in *R.* v. *Borough*,[25] *R.* v. *True*[26] but was accepted in *R.* v. *Hay*,[27] and *R.* v. *Frayer*,[28] and *R.* v. *Jolly*.[29]

In 1924, a committee was appointed by Lord Chancellor Birkenhead under the headship of Lord Justice Atkin which recommended that, "It shall be made clear that law does not recognise irresponsibility on the ground of insanity, where the act was committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist. The recommendations having the support of medical profession were opposed by judges and finally met a fatal blow at the hands of legislature. It was again rejected in *R.* v. *Koseph*,[30] *R.* v. *Flavell*[31] and in the famous Privy Council case of *R.* v. *Sodeman*.[32]

In 1953, Royal Commission on Capital punishment concluded that legal test of responsibility in the M'Naghten Rules being so defective, should be changed. If it were to be changed a formula on the following lines extending the scope of rules should be involved. That the jury must be satisfied that at the time of committing the act the accused was as a result of the disease of mind or mental deficiency :

(i) did not know the nature of the act,

(ii) that it was wrong, or

(iii) was incapable of preventing himself from committing it.

Stephen made similar suggestions century ago. The Privy Council in *Attorney General for South Australia* v. *Brown*,[33] again rejected irresistible impulse as a defence in English law.

Irresistible impulse as such is no defence under the English law but where there is a medical evidence of insanity, the judge is not prohibited to direct the jury that irresistible impulse being a symptom of mental disease can make the accused incapable of knowing the nature of the act or its criminality.

(d) Irresistible Impulse under the Indian Law

Section 84 of the I.P.C. which lays down the Indian Law on the defence of insanity is in substance the same as the M'Naghten Rules. This section deals only with that type of insanity which impairs the cognitive faculties leaving emotions and the will unaffected. Therefore, the doctrine of irresistible impulse does not find favour under the Indian law. According to Shamsul Huda[34] the pleas of irresistible impulse, would not by itself be a defence, but should be a good defence only where there is evidence of prior unsoundness of mind.

The courts in India have rejected this defence in cases of *Queen Empress* v. *Lakshman Dagdu*,[35] *Queen Empress* v. *Kadar Nasyer Shah*,[36] *Emperor* v. *Ramzan*,[37] *Queen Empress* v *Venkataswami*,[38] *Kanna Kummal* v. *State*[39] etc.

Keeping in view the development in psychiatry and changes in the law of insanity in the advanced penal systems of the world, an exception to Section 300 of the I.P.C. be appended reducing the offences of such persons suffering from irresistible impulse from murder to culpable homicide not amounting to murder.

2. The Durham Test

A powerful trend in modern psychiatric and legal opinion favours the adoption of a broader test, which correlates criminal liability with the various mental disorders that can seriously affect the comprehension and control of behaviour. In *Durham* v. *United States*,[40] the U.S. Circuit Court of Appeals of the District of Columbia, claiming authority to legislate regarding the test of criminal responsibility, adopted what is regarded as a new rule. Durham was convicted of housebreaking, pleaded insanity, and although a procedural issue regarding the prosecution's burden of proof was also involved, the principal point, argued in reversal and accepted by the circuit court was that the "existing tests of criminal responsibility are obsolete and should be superseded. The existing tests were assumed to include both the M'Naghten Rule and the "irresistible impulse" test. The former was found "fallacious" and discredited because in the words of the Royal Commission on Capital Punishment (1949-1953) it is based on an entirely obsolete and misleading conception of the nature of insanity. The "irresistible impulse" was held again in reliance upon the authority of Royal Commission, to be also inadequate in that it gives no recognition to mental illness characterised by brooding and reflection.

The Durham Rule stated that "ad accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect". 'Defect' is used in the sense of a condition which is not considered capable of either improving or deteriorating and which may be cogenital or the result of an injury or the residual effect of a physical or mental disease.

(*a*) *Criticism*

According to *Seymour* v. *Hallack*[41] psychiatrists at first welcomed the ruling in Durham's case as a forward movement in the enlightened treatment of the criminal. It was believed that the Durham rule would simplify psychiatric testimony and would allow for rational utilisation of psychiatric

knowledge. There has however, been much disillusionment. Initially the Durham rule was criticised mainly by the attorneys, but more recently psychiatrists as well have become skeptical of its value.

Among the major criticisms directed against the Durham rule have been as follows. Durham's rule is not concerned with the issue of *mens rea* or intent. It replaces a rule that can be understood and debated by laymen with a more nefarious and professional concept. As such it may present the psychiatrist with too much power to decide who is going to be punished or not punished.

Durham's rule materialises mental illness as a distinct condition and seems to assume that it can be readily defined.

There is a danger of circularity in the Durham's Rule. If an offender is defined as mentally ill, this designation is often based on an observation of his unreasonable behaviour during the crime. Both crime and mental illness are forms of adaptations, if the same behaviour is used to diagnose both conditions and if we then argue that one condition causes the other, we are in a logically absurd position.

Although Durham decision has been hailed as a humanitarian concern for the overwhelming majority of offenders.

The Durham decision opened the possibility of keeping people in mental hospitals for long periods of time even though they had not demonstrated evidence of social dangerousness or social violence. Some legal experts have argued that the Durham decision is so concerned with the interests of psychiatry that it neglects the humanitarian needs of offenders and can encourage serious abridgement of civil liberties.

3. Royal Commissions View

The Royal Commission on Capital Punishment (1949-53) considered insanity and mental abnormality so far as criminal

responsibility is concerned in Chapters IV to VI of their report (pages 73 to 157) and made several recommendations with regard to insanity as a defence. They observed :

"It has for centuries been recognised that, if a person was, at the time of committing an unlawful act, mentally so disordered that it would be unreasonable to impute guilt to him, he ought not to be held liable to conviction and punishment under the criminal law. We assume the continuance of this ancient and humane principle. On the general question of the continued application of the M'Naghten Rules one member of the Commission was opposed to any change. Three members were in favour of adding a clause according to which, if the jury are satisfied that the accused knew the nature and quality of his act, and that it was wrong, they must still acquit him if satisfied that he was incapable of preventing himself from committing the act. The majority of the commission would have gone further and abolished the M'Naghten Rules altogether. On this view, one broad question should be left to the jury, namely, whether, at the time of the act, the accused was suffering from a disease of the mind or mental deficiency to such a degree that he ought not to be held responsible. There is yet no sign whether this part of the report has been carried into effect, but a later recommendation applicable only in cases of homicide has been incorporated into the Homicide Act, 1957.

(4) "The Model Penal Code Formulation"

The American Law Institute, in its Draft Model Penal Code, preferred a formulation of the rules along the lines of the minority view of the Royal Commission, but they also introduced the notion that the test should be substantial incapacity thus getting away from the idea of total incapacity required by the M'Naghten Rules. "Nothing makes the inquiry into responsibility more unreal," the commentary says, "than limitation of the issues to some ultimate extreme of total incapacity, when clinical experience reveals only a gradual scale with marks along the way.

The Model Penal Code Formulation is in effect a combination of the M'Naghten Rules and irresistible impulse. The differences are in details rather than in principle, and it may be doubted whether in some respects they are an improvement on the models which they replace. In any even the new formulation is open to the same charge as its predecessor. It does not meet all classes, it is not in accordance with the practice of psychiatrists, and is likely to produce a great deal of verbal jugglery in order to make it workable.

5. The Homicide Act, 1957

The outcome of the report of the Royal Commission was the Homicide Act of 1957, Section 2(5) of which provides a means of by passing the difficulties surrounding the M'Naghten Rules by means of the doctrine of diminished responsibility. The Homicide Act, 1957, in Section 2 provides :

(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

(2) One a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section be liable, whether as a principle or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

This section has been interpreted differently in different cases. In *R.* v. *Spriggs*,[42] the interpretation of the terms

"abnormality of mind" and mental responsibility was left to the jury. Then in *R.* v. *Waldan*[43] it was laid down by the Court of Criminal Appeal that *R.* v. *Spriggs* must not be taken to mean that a judge is limited to bringing before the judge the exact words of section; and that on the contrary, it is open for him to point out to the jury the sort of things which they can look for in order to decide whether, on the facts, the case comes within the section. A year later in *R.* v. *Byrne*[44] the reference to the borderline of insanity was repeated but in 1961 in the case of *Rose* v. *Regiman*,[45] the Judicial Committee of the Privy Council stated that a reference to the border-line of insanity was not always helpful, especially when linked to insanity as defined in the M'Naghten rules, since that would be an undue limitation of the wide words of the section. The Judicial Committee, however, expressed their agreement with other statements of the court of criminal Appeal in *R.* v. *Byrne* that the words abnormality of the mind in the section appeared to be wide enough to cover the mind's activities in all its aspects including the ability to exercise will power to control physical acts in accordance with rational judgment.

This provision of Homicide Act purports to save the judge from having to pass a formal sentence of death in a case of insanity outside the M'Naghten Rules, where the sentence would not in any case be carried out, and also give a measure of recognition to mental abnormality short of insanity. The doctrine of diminished responsibility posits a reduction of culpability and punishment because of a reduced capacity to form all the required mental elements. The doctrine of diminished responsibility known to Scottish law for some ninety years at least impressed the members of the Royal Commission favourably. But they felt inhibited to recommend its introduction into English law unless it could be applied to responsibility for all crimes other than murder. The Commission thought erroneously it seems, that in Scotland, diminished responsibility was restricted to cases of homicide only.

The acceptance of this doctrine has mellowed down the criticism of the M'Naghten Rules. The rigidity of these

rules with regard to the disease of the mind and difficulties that arise in relation to insanity not affecting the reason or the intellect do not apply to diminished responsibility. Moreover, where a technical acquittal is required, diminished responsibility has the advantage of the possibility of a lighter sentence, or sentence in the discretion of the court as against detention.

It is thus clear that the M'Naghten Rules have met severe criticism in the country of their origin as well as in other countries and various attempts have been made in England and U.S. to mitigate their harshness.

NOTES AND REFERENCES

1. Kenny's *Outlines of Criminal Law*, Nineteenth Edition, 1966, p. 82.
2. *H.M. Advocate* v. *Fraser* (1978) 4 Couper 70.
3. (1916) 12 Cr. App. R. 21 (T.A.C.).
4. (1952) 2 Q.B. 826.
5. Kenny's Outlines of Criminal Law (1966), p. 85.
6. (1955) 1. W.L.R. 317.
7. (1957), I.Q.B. 399.
8. Glanville Williams, A Text-book of Criminal Law, 1978, p. 599.
9. Introduction to Criminal Law (Seventh Ed.), p. 80.
10. Kopsch (1925), 19 Cr. App. Rep. 50, pp. 51-52.
11. "Psychiatry and the Criminal Law", Mental Hygiene 575.
12. Sep. 26, 1978, American Bar Association Journal, p. 1915, Dec. 1978.
13. Taylor's Principles and Practice of Medical Jurisprudence, 1965, p. 476.
14. Jerome Hall, Principles of Criminal Law, p. 472, Second Edition.
15. *Ibid.*
16. Friedmann : Law in the Changing Society, p. 146 (1970).

16a. Dr. H.R. Rollins, Crime and Mental Disorder Daniel M'Naghten, A Case in Point, Medico Legal Journal, Part three, 1982, p. 104.

17. Law and Psychiatry 48 (1962).
18. J. Hall, General Principles of Criminal Law (Second Ed.), p. 486.
19. J. Hall, *Ibid.*, p. 487.
20. Gurpal Singh, Doctrine of Irresistible Impulse (1974-75), Punjab Univ. Law Review, (Vol. 24-27), pp. 88-89.

21. Taylor's Principles and Practice of Medical Jurisprudence, Vol. I p. 560 (1956) 11th ed.
22. Queen Empress *v.* Lakshman Dagdu, I.L.R. 10 Bom. 512, Queen Empress *v.* Venkata Swami, I.L.R. 12 Mad. 459, Kodar Nasyar Shah *v.* Queen Empress (1896) I.L.R. 23 Col. 604 etc.
23. (1859) 1 F.F. 666.
24. (1863) 3 F.F. 772.
25. (1884) 2 F.F. 838.
26. (1922) 22 Cox C.C. 268.
27. (1911) 22 Cox C.C. 268.
28. (1915) 24 Cox C.C. 403.
29. (1919) 83. J.P. 296.
30. (1925) 19 Cr. App. R. 50.
31. (1926) 19 Cr. App. R. 141.
32. (1936) 2 All. E.R. 1138.
33. (1960) A.C. 432 (P.C.).
33a. (1960) A.C. 432 (P.C.).
34. Principles of the Law of Crimes (1902).
35. (1886) I.L.R. 10 Bom. 512.
36. (1896) I.L.R. 23 Cal. 604.
37. Pb. Record No. 30 of 1918 (Crim.).
38. I.L.R. 12 Mad. 459.
39. AIR 1967 Kerala.
40. 214 F. 2d 862, 874.
41. Psychiatry and the Dilemmas of Crime, p. 214 (1967).
42. (1958) 1 Q.B. 270.
43. (1959) 3 All. E.R. 203.
44. (1960) 3 All. E.R. 1.
45. (1961) 1 All. E.R. 859.

3

STATUTORY LAW OF INSANITY IN THE AREA OF CRIMINAL JURISPRUDENCE

A. INTRODUCTION

To know the statutory law of insanity we have to acquaint ourselves with the yardsticks by which to measure insanity. In other words, we can say the tests or parameters of insanity. There are two types of tests which enable us to determine insanity. One is the legal test and the other the medical test. These two tests or parameters are not identical. Thus a person may be insane by medical standards without being legally insane and *vice versa*. In this chapter we are concerned with the various tests legal as well as medical by which alleged unsoundness of mind has to be measured.

B. PARAMETERS OF INSANITY

(1) Introductory

As already mentioned parameters of insanity are two-fold, legal and medical. Now legal parameters may further be divided into statutory parameters, i.e., the tests laid down in Section 84 of the Indian Penal Code and judicial parameters, i.e., the yardsticks of insanity laid down by the courts and which fall outside the scope of Section 84 or are different from Section 84.

Section 84 mentions the legal test of responsibility in case of alleged unsoundness of mind. It states as follows: "Nothing is an offence which is done by a person, who at the

time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

(*a*) *Underlying Principle of Section 84*

According to Sir Hari Singh Gaur[1] the underlying principle of Section 84 is that every man is presumed to be sane. It is the legal parameter laid down in Section 84 as distinguished from the medical test by which the criminality of the act is to be determined. This section in substance is the same as the M'Naghten Rules. According to Blackstone[2] it is the defective or vitiated understanding which is responsible for deficiency of will that forms an excuse for the guilt of crimes. Thus, a lunatic or an idiot is regarded not responsible for his crime because rule of law as applicable to them is furious furore *suo puniter*. The maning of this Latin maxim is that a mad man is punished by his madness alone. There are two other maxims in this connection which form the basis of Section 84. They are: '*furiosus nulla voluntus est*' which means that a mad man has no wills and '*furiosus absentis locoest*' which means that a mad man is like one who is absent. Idiots and lunatics are to be excused from the guilt of the crimes provided they are committed by persons labouring under these incapacities. In order to constitute a crime, the intent and act must concur as postulated by the principle of *mens rea*. Section 84 attaches no culpability to insane persons because they have no rational thinking or necessary guilty intent.

(b) *Distinction between Section 84 and M'Naghten Rules*

(i) *Rules in M'Naghten's Case*: As the Indian law of insanity is based on M'Naghten rules it is necessary to reproduce these here. Since M'Naghten's case has been discussed in detail in the last chapter, it would suffice to know the principles laid down in that case which may be written in the form of five propositions.

(b-i) That every man is presumed to be sane and to

possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to the satisfaction of the jury or the court.

(b-ii) To establish defence on ground of insanity it must be clearly shown that at the time of committing the act, the accused was labouring under such a defect of reason from disease of mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know that what he was doing was wrong.

(b-iii) If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of land, he is punishable.

(b-iv) A medical witness who has not seen the accused before trial should not be asked whether on evidence he thinks that the accused was insane.

(b-v) Where the criminal act is committed by a man under some insane delusion as to the surrounding facts which conceals from him the true nature of the act he is doing he will be under the same degree of responsibility as he would have been on the facts he imagined them to be.

(ii) *M'Naghten Rules Forming the Basis of Section 84* : It may be observed that the Indian law on insanity is based on the above propositions No. (bi) and No. (bii) which have been drawn from answers to questions No. (2) and No. (3) in M'Naghten case, which may be written as follows :

(ii-a) To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

(ii-b) If the accused was conscious that the act was one which he ought not to do and if that act was at the same time

contrary to law of land, he is punishable.

These are the two rules, on which Section 84 is based.

(iii) *Distinction between Section 84 and the M'Naghten's Rules* : If we compare the wording of Section 84 and the M'Naghten Rules on which this section is based we find that certain words are present in M'Naghten rules whereas they are absent in Section 84. Thus, in M'Naghten's Rules we find the words defect of reason through disease of mind whereas section 84 uses the words unsoundness of mind. However, this difference is a difference of word selection only because defect of reason and unsoundness of mind connotes the same thing. If a person has defective reasoning due to mental disease, we can call him a person of unsound mind. Another difference we find on comparison is that the word quality found in the M'Naghten Rules is missing in Section 84. However, this distinction is not material as both the words 'nature' and 'quality' refer to the physical character of the act. Likewise the expression 'contrary to law' appearing in Section 84 is not to be found in the M'Naghten Rules.

(c) *Semantic Selection*

Let us now analyse Section 84 to glean out the legal parameters of insanity from it. Section 84 may be stated as follows :

"Nothing is an offence which is done by a person who,

(i) at the time of doing it,
(ii) by reason of unsoundness of mind,
(iii) is incapable of knowing the nature of the act, or
(iv) that he is doing what is either wrong or contrary to law."

(i) *At the Time of Doing It* : The state of accused's mind at the time of doing at alleged act and not ante-offence nor post-offence is relevant. It is very difficult for the courts to make a finding in this regard because there is no instrument which

can measure with mathematical accuracy the mental condition of the accused at the time of commission of the offence. The mental condition of the accused's mind has to be judged by examining the evidence of the persons who had the opportunity to observe the behaviour and conduct of the person conceived prior to, at the time of, and after the commission of the offence and the available medical evidence.

To get the protection of Section 84 of the I.P.C. the person must be *non compos mentis* at the time of commission of offence. The crucial point of time is the time of commission of offence. It is the presumption of law that every person of the age of discretion is sane unless contrary is proved, and even if a lunatic has lucid intervals the law presumes the offence of such person to have been committed in a lucid interval unless it appears to have been committed during derangement.[3]

Section 84 speaks of mental irresponsibility at the time of the act. Thus, accused's subsequent incapacity does not affect his crime, though it effects his trial, and contingency has been therefore, provided for in the Cr.P.C.[4]

There is a distinction between incapacity at the time of doing the act charged and incapacity at the time of trial. While both are induced by unsoundness of mind, the former is substantive which excuses the offence under Section 84 of the I.P.C. the latter affects the procedure and merely postpones the trial under Section 329 (old Section 465) of the Criminal Procedure Code. Incapacity continuing from the time of doing the act, as much as capacity supervening thereafter and persisting at the time of trial will only result in postponement of the proceedings. But if there is no present incapacity, the trial takes place at which the plea of incapacity at the time of doing the act charged becomes a relevant plea, the proof of which lies on the defence under Section 105 of the Evidence Act, whatever the standard of that proof may be. Section 329 (Section 465, old) Cr.P.C. says that if a person appears to the court at his trial to be of unsound mind and consequently incapable of making his defence the court concerned is required

to try in the first instance the fact of such unsoundness and incapacity. If as a result of the inquiry the court is satisfied that the accused is so incapable then all further proceedings are required to be postponed.

The fact that the accused must be insane at the time of commission of the alleged offence has been laid down in a number of cases. Thus, in *Ratan Lal* v. *State of M.P.*[5] the court held that the crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the accused.

In *S.W. Mohammad* v. *State of Maharashtra*[6] the court observed that the question to be asked is, is there evidence to show that at the time of the commission of the offence, he was labouring under any such incapacity ? On this question, the state of his mind before and after the commission of the offence is relevant. The general burden of proof that an accused person is in a sound state of mind is upon the prosecution. In *Shivraj Singh* v. *State of M.P.*[7] the court held that it is the state of mind at the time of the offence, neither anti-offence nor post-offence, which is to be determined albeit to arrive at the conclusion the mental state of mind, both antecedent and subsequent to the event would be relevant.

In *Sanna Eranne* v. *State of Karnataka*[8] the court held that the crucial point of the time ascertaining the state of mind of the accused is the time when the offence was committed, and whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 I.P.C. can only be established from the circumstances which preceded, attended and followed the crime.

In *Prakash* v. *State of Maharashtra*[9] the court held that to apply the provisions of Sections 84 so as to relieve the person from criminal liability, it is well settled that the conduct of the accused preceding the act complained of, as well as succeeding the act and also his conduct during the course of the

complained incident, all call for close scrutiny. The record that prior to the actual incident, the accused, was suffering from mental disorder and also he was treated for such mental disorder after the incident, would certainly assist the court in coming to a just and proper conclusion.

(ii) *Unsoundness of Mind* : Section 84 uses the expression 'unsoundness of mind' to include 'insanity', 'madness' or 'lunacy' for the definition of each of these may differ in degree and kind. These terms are often used interchangeably but it is very difficult to give a precise definition of these words. According to Gaur[10] the words "unsoundness of mind" are equivalent to '*non compos mentis*'. The unsoundness of mind described here may be temporary or permanent or may be produced by sickness or by alcohol. Unsoundness of mind here includes any kind of insanity, which naturally impairs the cognitive faculties[11] of mind and which can form a ground of exemption from criminal liability. Courts in India are concerned with "unsoundness of mind" as defined in the section and not with the "unsoundness of mind" as understood in medical science. For speaking medically, the unsoundness of mind would admit of a variety of conditions of varying degrees of severity menifesting too many characteristics to justify any precise definition, applicable to all cases. It is for this reason that in law the expression unsoundness of mind of a person has been given different content according to the nature and degree of the protection it is intended to be given to him. For example, in the Indian Contract Act, 1872, when defining a 'sound mind' the emphasis is on the capacity to form rational judgment as to the affects of the contract on his interest (Section 12).

In Probate cases, the test naturally employed is : was the testator of a sound disposing mind, i.e., was he able to understand, the nature of the act and its effects, the extent of the property which he was disposing and the claims he ought to give effect to. In Section 65(2) of the Indian Lunacy Act, 1912, the law is concerned with "whether the person is of unsound mind so as to be incapable of managing his own affairs. "For the purposes of criminal law, the emphasis thus

appears to be on "unsoundness of mind" which incapacitates the person from knowing the nature of the act or that what he is doing is either wrong or contrary to law.

2. Legal Parameters

Here we are concerned with the parameters or the tests laid down by law to adjudge the alleged unsoundness of mind of the accused. Legal parameters may further be divided into the statutory parameters, i.e., the tests laid down by the statute, i.e., Section 84 and the judicial parameters which are laid down by the various High Courts and are not authoritative statement of law on insanity.

(a) *Statutory Parameters*

The statutory parameters are the tests of insanity laid down by Section 84. They are two-fold. One is that, if the person does not understand the nature of the act, he will be protected by Section 84 and the other is that if the person does not know that his act is wrong or contrary to law he will presumed to be insane till contrary is proved. Let us now discuss the statutory parameters.

(i) *Nature of the Act* : The first parameter as laid down by Section 84 of Indian Penal Code is that a person will be presumed to be insane only if he is unable to understand the nature of the act. Hence, it becomes necessary to understand the meaning of the term 'nature of the act'. By 'nature of the act' is meant the physical nature of the act or the normal effects of the act. A man is properly said[12] to be ignorant of the nature of his act, when he is ignorant of the properties and operation of the external agencies which he brings into play. According to Mayne,[13] the words "incapable of knowing the nature of the act' may refer to two different states of mind which are distinguished by the words 'nature' and 'quality'. A man is properly said to be ignorant of the nature of his act when he is ignorant of the properties and operation of the external agencies which he brings into play. To take an example, suppose of an idiot who fires a gun at a person, thinking it to be a harmless

firework. Here he is ignorant of the quality of his act if he knows the result which will follow, but is incapable of knowing the heinous and shocking nature of the result. Both of these states of mind are intended by the authors of the I.P.C. to be included under the words nature of the act. However, this ground of exemption will only be found in the case of idiots and lunatics, whose insanity is so complete as to sweep away substantially all the reasoning power which distinguishes a man from a beast. But the consciousness possessed by idiots and lunatics is the same as possessed by lower animals and they know that the act which they did was wrong in the sense of being forbidden by law. This, however, would not render him liable under the words of the second clause, if he was incapable of knowing the nature of the act which he really did and for which alone he could be indicated. A good illustration is to be found in the case, mentioned by Sir James Stephen, of the idiot who cut off the head of a man whom he found sleeping, because, as he explained, it would be such fun to watch him looking about for his head when he awoke. It is probable that the idiot was quite aware that the man was entitled to the possession of his head and expected that if he was detected he would be well cuffed by the man and very probably taken up by the police. But it is quite certain he had no idea that his fun would be lost, because the man would never awake."

(ii) *Right and Wrong Test* : The second test that enables an insane person to get the benefit of Section 84 is the right and wrong test. In other words, an insane person shall be exempted from liability only if his insanity has made him unable to distinguish between right and wrong or that he does not know that he is doing is either wrong or contrary to law. In this clause the authors of I.P.C. have used two expressions, 'wrong' and 'contrary to law'. Here, we are concerned with the interpretation of the word 'wrong'. Whether the word wrong means moral wrong or legal wrong, we will have to see.

(ii-a) *Theory of Legal Wrong* : In the case of *R.* v. *Codere*,[14] the appellant had been convicted of murder. Insanity was the only defence raised at the trial. The court held that the question of the distinction between morally and

legally wrong opens wide doors. In a case of this kind, i.e., killing, it does not seem debatable that the appellant could have thought that the act was not morally wrong, judged by the ordinary standards, when the act is punishable by law, and is known by him to be punishable by law. The standard to be applied is whether according to the ordinary standard adopted by reasonable men the act was right or wrong. Once it is clear that the appellant knew that the act was wrong in law, then he was doing an act which he was conscious he ought not to do, and as it was against the law, it was punishable by law, assuming therefore, that he knew the nature and quality of the act, he was guilty of murder, and was properly convicted.

Thus, in this case the word wrong was interpreted to mean wrong in law, i.e., legal wrong.

In another case *R.* v. *Windle*,[15] the accused gave his wife a fatal dose of aspirin. He admitted that he had done so, and said he supposed he would hang for it. The accused's only defence was that of insanity. The court laid down that the courts of law can only distinguish between that which is in accordance with law and that which is contrary to law. There are many acts which are contrary to law of God and man. For instance killing is forbidden by law as well as by morality. However, to speak of adultery, although it is contrary to the law of god, so for as the criminal law is concerned, it is not contrary to the law of man.

In the opinion of the court there is no doubt that in the M'Naghten Rules "wrong" means contrary to law and not "wrong" according to the opinion of one man or of a number of people on the question of whether a particular act might or might not be justified.

In this case the court held that the word wrong means contrary to law or legal wrong.

(*ii-b*) *Theory of Moral Wrong* : There is another school of thought which profess that the word 'wrong' in Section 84

must mean morally wrong. Thus, Huda[16] observes as follows, 'looking upon insanity as a mere source of intellectual error and intellectual compulsion insanity whether temporary or permanent complete or partial, is excusable—

(a) If it overpowers the will and the sufferer ceases to be a free agent or in other words, it gives rise to what is known as irresistible impulse.

(b) If it deprives the sufferer of the knowledge that the act is either morally wrong or contrary to law. Thus, the insanity of the accused must be such as to render him incapable of knowing that his act is morally wrong or contrary to law.

An act may be morally wrong but is not forbidden by law that is it is not contrary to law. Thus, to take the case of bigamy, there is no doubt that bigamy is morally wrong but under laws of certain countries it is not forbidden.

In case of *Rambharose* v. *State of M.P.*[17] the M.P. High Court has observed that the word wrong in Section 84 must mean morally wrong, otherwise it will be redundant and serve no useful purpose.

(*ii-c*) *Appraisal* : It is very difficult to limit the meaning of the word wrong either to moral wrong or to legal wrong. Cordozo J. in an American case *People* v. *Schmidt*[18] has observed, "It is impossible to say that there is any decisive adjudication which limits the word wrong to legal as opposed to moral wrong.

Similarly Burdick[19] says that there is no universal standard of right and wrong and hence of responsibility that there are great differences of opinion for instance among sects and nations on the subject of polygamy and polyandry or even promiscuity. It is not what the individual may think is right or wrong that defines his responsibility to the law, but what the law and consensus of men generally declare to be wrong. Many men differ in opinion as to the morality or to the righteousness of a law but nevertheless they are bound by it.

One acting even under a delusion that he is bidden by divine command to kill, if he also knows it is contrary to the law of the land, can't be said not to know that it is wrong.

However, if we look at the language of Section 84 we see that two expressions 'wrong' and contrary to law occur in it. Now the expression contrary to law conveys the meaning forbidden by law. If the word wrong is also interpreted to even legal wrong the two expressions become synonymous. Hence, word wrong must mean moral wrong and not legal wrong otherwise the expression contrary to law becomes superfluous.

(*iii*) *Judicial Application of the Parameters* : Section 84 of the I.P.C. lays down two tests which entitle a person to get the benefit of this section. One of these test or both of these tests may be present in a case. However, it is necessary that either of these tests must be present to seek the protection of exemption granted by Section 84. After examining the case law I have come to conclusion that the courts have laid down that either nature of the act test or 'right and wrong test' must necessarily be present. In no case stress was laid on one of these tests. So case law on both the tests has been dealt with under the same head.

In *Karma Urang* v. *Emperor*,[20] the appellant accused was charged with the murder of his father. On being questioned by the court the accused said that he had a dream in which Goddess Kali commanded him to kill his father, or he would die. The civil surgeon who treated him for alleged insanity said that the appellant had definite delusion, which passed off after a couple of months; that he could not tell right from wrong, that he was definitely insane and said that he wanted to dedicate his father's head to the Goddess Kali. After killing his father, he proceeded towards the court along with the head of his father in his hand and on being questioned by the police did not run away.

The court observed that the test that govern such cases is that the accused must be incapable of knowing the nature of

the act or that he is doing what is either wrong or contrary to law.

A very common way of applying that test is to ask, in the circumstances whether the man would have committed the act if a policeman had been at his elbow.

In the present case, after observing the facts, it can be said that although he knew the nature of the act, i.e., by cutting his father's head with a dao, he (father) would die, he did not know that his act was wrong or contrary to law. Had he known it, he would have run away from the place of occurrence. Hence his appeal was rightly allowed.

In *Mohammed Hussain* v. *Emperor*,[21] the accused killed his wife on the ground that she had illicit relations with his father. Evidence was adduced on behalf of the accused, that he was suffering from fits and mental unsoundness for the last three and a half years.

The court held that he had killed his wife under the influence of a delusion which had produced in his mind a *bona fide* belief that the woman had been guilty of the aforesaid abominable conduct, but that his delusions did not prevent him from knowing the nature of his act. The court found the accused's conduct showing that though he believed that in killing his wife he would do something morally justifiable he was at the same time aware that the law would punish him and still he chose to kill. The court, therefore, denied him the protection of Section 84. In the above mentioned case the accused knew the nature of his act as well the fact that his act was wrong in law and was forbidden by it hence he was rightly convicted by the court.

In *Emperor* v. *Bheleka Aham*,[22] the accused killed a boy Ratneshwar by inflicting a blow with a dao. After killing the boy he fled accross the fields. The blow was unprovoked and unpremeditated. There was evidence that the accused was addicted to excessive use of opium and that for some days

before and after killing the boy, he was behaving irresponsibly.

The court observed that under Section 84, unsoundness of mind producing incapacity to know the nature of the act committed or that it is wrong or contrary to law is a defence to a criminal charge, but by Section 85 such incapacity is no defence, if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease which produces such incapacity, then Section 84 applies though, the disease may be of temporary nature. In the present case, continuous intoxication had produced a disease which had rendered the accused incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. hence he got the protection of Section 84.

In *Pancha* v. *Emperor*,[23] the accused appellant was charged with the murder of one Fakira Chamar. Murder was committed by the accused during lunar eclipse when there was darkness all round. The accused had aimed all the blows on the head of the deceased which indicated deliberation and he ran away from the spot as soon as the alarm was raised. Medical evidence showed that the accused was of weak intellect but otherwise he did not show any signs of insanity while under observation.

The question for consideration is whether the accused can be acquitted on the ground of insanity.

The court observed, "No doubt in order to find whether the accused was by reason of unsoundness of mind incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law, a court may rely not only on the defence evidence but also on what is elicited from the prosecution witnesses as well as on circumstantial evidence consisting of the previous history of the accused and his subsequent conduct and also of course on the surrounding circumstances including the absence of motive. But the court before acquitting the accused has to record a categorical finding that he was incapable of knowing the nature of the act bc

committed or knowing that he was doing what was either w rong or contrary to law.

As in this case insanity of the accused had not deprived him of the power of understanding the nature of his act, his conviction was upheld but sentence was reduced from death to transportation for life.

In *Narain Sahi* v. *Emperor*,[24] the accused Narain Sahi killed his wife and son on his wife's refusal to give him money. After killing his wife and son the accused ran away from the place of occurrence and was found sleeping in his maternal uncle's house wearing the same blood stained clothes which he wore at the time of the crime. When asked by prosecution witnesses to go home the accused replied that he desired to take bath and wash his clothes. Evidence was adduced as to the previous mental history of the appellant.

The court held that in such cases where insanity is pleaded as a defence, we have to consider two issues. First is that the accused has established that at the time of committing the act, he was of unsound mind. Second is that if he was of unsound mind, the unsoundness of mind was of a degree and nature to satisfy one of the knowledge tests laid down by the Section 84. Whether at the relevant time the accused was of unsound mind is a matter of influence from his previous and contemporaneous acts, statements and demeanour and from any other relevant evidence as to insanity in his ancestors or relations, as to particular illness affecting the mind and from any medical evidence that may be tendered. Mere eccentricity is not enough there must be enough to show that at the material time the accused was suffering from some definite or recognisable form of mental disease. Insufficiency or absence of motive is not in itself sufficient evidence of legal insanity, but is an important factor to be taken into consideration together with other facts and circumstances in determining whether or not the accused was at the time, of unsound mind.

As the accused appellant knew the nature of the act as well

as that his act was contrary to law as disclosed by the facts, he was not protected by section 84 and his appeal was dismissed.

In *Hazara Singh* v. *The State*,[25] the accused laboured under a strong delusion of unfaithfulness of his wife. The brooding over the character of his wife took the form of a kind of temporary insanity. Disturbed by the thoughts about the unchastity of his wife during the night of occurrence, the accused caused her death by throwing nitric acid upon her. The medical evidence showed that he was capable of knowing what he was doing and had ordinary concept of right and wrong.

The court held that it is not every impairment of mental processes or any deviation from the recognised standards that will earn for the accused the verdict of not guilty, in the sense that *mens rea* is absent. The test that law insists upon is the right and wrong test of M'Naghten Rules as recognised in Section 84 of the Penal Code. This test has been accepted in India as a correct guide for determining the guilt or innocence of the person who pleads insanity as a defence.

The accused in the present case can't be said to be suffering from unsoundness of mind within the meaning of Section 84 of the I.P.C. Thus, he was rightly sentenced to imprisonment for life.

In *Abmi* v. *State of Kerala*,[26] the accused killed his wife with a chopper as he suspected her chastity. On seeing the neighbours approaching towards him, he threatened them with dire consequences and closed himself in a room. After that he told his neighbours that he had killed his wife and that they could inform the appropriate authorities. The doctor who examined the accused gave evidence, that he was suffering from schizophrenia. The court commenting on the doctor's evidence observed. "The evidence of the doctor would at the most show that the accused was not mentally a normal person. This can't amount to legal insanity."

Examining the entire evidence the court was of the opinion that the conduct of the accused was an indication of his being

conscious of the nature of the act in that he was prepared to suffer the consequences of his wrongful act. And if he was conscious of the nature of the act, he must be presumed notwithstanding the medical evidence to have been conscious of its criminality.

Of the two tests mentioned above, i.e., 'nature of the act' test and 'right and wrong test, the first seems to refer to the offenders consciousness of the bearing of his act on those who are affected by it, the second to his consciousness of its relation to himself. These two elements need not be simultaneously present in each case nor indeed, are they invariably so present. The absence of both or either relieves the offender from liability to punishment. Situations like automation, mistake and simple ignorance such as can occur only in gross confusional states are covered by the first category, whereas the second category embraces cases where mental disease has only partially extinguished reason.

In *Queen Empress* v. *Kader Nasyer Shah*,[27] accused neglected his house and field work and complained of frequent headaches, and spoke to no one when the pain was severe. ever since his house and property were destroyed by fire. He normally played and went about with children much more than is normal for man of his age. He was very fond of one boy in particular. Unaccountably he one day killed this boy. There was no motive for his action. However, there was proof that he observed some secrecy after committing the murder.

The court held that the behaviour of the accused did not prove that he was by reason of unsoundness of mind incapable of knowing the nature of the act and thus found him guilty but recommended to the Government for indulgent consideration as, in its view, the accused was suffering from some kind of mental derangement. In *re Pappathi Ammal*,[28] the accused appellant jumped into a well along with her newly born baby. The child was drowned but the accused was saved. She was charged with murder and attempt to commit suicide but she pleaded that she was a somnambulist or sleep walker and that during her sleep she must have walked into the well along

with her child. The question before the court therefore was whether somnambulism could amount to insanity within the meaning of Section 84.

The court held that it is necessary for the application of the Section 84 to show that (a) the accused was of unsound mind, (b) he was of unsound mind at the time he did the act and not merely before or after the act, and (c) as a result of unsoundness of mind he was incapable of knowing the nature of the act or that he was either what was either wrong or contrary law. If unsoundness of mind is urged as a ground of exemption to from liability, it is for the person who seeks the exemption to prove it. Three points which fall for determination in this appeal are : whether the accused was a somnambulist at the time of the commission of the offence, secondly, whether somnambulism would amount to that insanity contemplated under Section 84 I.P.C. and thirdly, the scope and extent of the plea of insanity open to the accused in the circumstances of this case.

Regarding the first point, it has not been shown as a fact that the accused was a somnambulist or a sleep walker as is clear from the evidence of prosecution witnesses.

As regards the second point, relying on Modi's Medical Jurisprudence and Toxicology, the court observed that somnambulism forms a very good plea of defence for exemption from criminal liability, if it can be proved that the accused committed the offence during the fit.

In this case there has been no expert examination or collection of evidence in the light of medical knowledge of puerperal disorders and the specific defence incumbent on the accused has not been set up. Thus, it was not a case of puerperal insanity to constitute a valid defence under Section 84 of the I.P.C.

Therefore, the court affirmed the conviction but directed that the period of imprisonment be reduced to a period of six months.

In *Bhikhari* v. *The State of U.P.*,[29] the appellant was charged with the murder of one year old girl Lachhminia and also attacking two or three persons with a sickle. The accused had absconded after the attack. The defence counsel pleaded the insanity of the accused.

The court held, that the burden of proving the existence of circumstances under Section 105 of the Indian Evidence Act, 1872 bringing the case within any of the exceptions specified in the penal code lies upon the accused person. The court shall presume the absence of such circumstances.

Intention, however, has to be proved by the prosecution. If a person deliberately strikes another with a deadly weapon which according to common experience of mankind is likely to cause an injury and sometimes when a fatal injury depending upon the quality of the weapon and the part of the body on which it is struck it would be reasonable to infer that what the accused did was accompanied by the intention to cause a kind of injury which in fact resulted from the act.

Section 84 can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law.

There was no evidence on record to prove the characteristics of his habit from which it could be concluded that he was acting like an insane man. The facts showed that the accused did not act under the influence of insanity but only with some previous deliberation and preparation. He had given threatening to the witnesses. All the circumstances led to one conclusion that he was not insane and that he had acted like a sane man with some motive. Therefore, the court dismissed the appeal.

In *Ratan Lal* v. *State of M.P.*,[30] the court held that the crucial point of time at which unsoundness of should be established is the time when the crime is actually committed.

and the burden of proving this was on the accused.

The court in this case allowed the appeal as the accused was a person of unsound mind at the time of commission of offence and he did not know that his act was contrary to law.

In *S.W. Mohammad* v. *State of Maharashtra*,[31] the accused was charged with offences under Section 302 I.P.C. for having caused the death of his wife Saifulla and his daughter Shama. The defence counsel raised the plea of insanity. The court in this case repeated by saying that to establish that the acts done are not offences under Section 84 of the I.P.C. it must be proved clearly that at the time of the commission of the acts, the appellant by reason of unsoundness of mind was incapable of either knowing the nature of the act or that the acts were either morally wrong or contrary to law.

Insanity must be shown to exist at the time of commission of offence and for this purpose, state of mind of the accused before and after the commission of the offence is relevant. The court further held that it would be most dangerous to admit the defence of insanity upon arguments derived merely from the character of crime. The mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away, when the door was broken open would not indicate that he was insane or that he did not have the necessary *mens rea* for the commission of the offence.

The court did not find the accused to be of unsound mind within the meaning of Section 84 and hence appeal was dismissed.

In *Oyami Ayati* v. *State of M.P.*,[32] the appellant was convicted under Section 302 I.P.C. by the Add. Session Judge and sentenced to undergo life imprisonment. When the appellant was undergoing the sentence of imprisonment, he murdered co-prisoner by attacking him with a knife. The appellant admitted before the trial court that he had killed the deceased. On appeal and reference the H.C. affirmed the judgment of

the trial court. The counsel for the accused pleaded the insanity of the accused.

The S.C. held that the fact that the appellant made a clean breast of the matter and admitted the various allegations of the prosecution would not go to show that the appellant was of unsound mind. The further fact that the appellant caused the death of the deceased over a trifling matter would not warrant a conclusion that the appellant was not a sane person. Moreover, the accused did not take the plea of insanity at the trial. The burden of proving that the appellant is an insane person is upon the accused to show that he was of unsound mind at the time of commission of offence and as such incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. As the accused could not prove all these things, appeal was dismissed.

In *Shivraj Singh* v. *State of M.P.*,[33] the accused was charged with murder under Section 302 I.P.C. and was convicted by the trial court. Plea of insanity was raised on behalf of the accused.

The court held that Section 84 of I.P.C. provides for legal test of insanity and not the medical test of insanity wrong under Section 84 means moral wrong and not legal wrong, as legal wrong would mean the same as the words contrary to law and hence the word wrong would become redundant.

The court further held that sheer abnormalities of behaviour can't be used as an umbrella to protect the offenders on the ground of insanity. Such abnormalities can well be pretended by offender's as preconceived defence to their planned criminal act. It is on the totality of the evidence and circumstances of the individual case that a matter has to be decided. As the accused was not found to be insane within the meaning of Section 84, his appeal was dismissed.

In *Chaggan* v. *State*,[34] the accused was convicted by the Sessions Judge for the murder of his mother. The accused had told the prosecution witnesses that his mother was a witch

and so he killed her. There was evidence that the accused was not keeping well for the one month prior to the incident and used to run after village children and cattle heads. So, it was argued by the defence counsel that he was of unsound mind and therefore, should get the protection of Section 84.

The court held, "that in order to obtain the protection of section 84 I.P.C. the person must be *non compos mentis*, i.e., of unsound mind at the time of commission of offence. There was no evidence on record to show that what he was doing was contrary to law. The only evidence was that he was feeling giddy and that he used to run after cattle heads. Such a weak evidence could be of no avail to ensure the protection of Section 84. Law presumes every person of the age of discretion to be sane unless contrary is proved, and even if a lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval unless it appears to have been committed during derangement. It would be most dangerous to admit a defence of insanity upon arguments merely derived from the character of crime. The mere fact that it was attended with some giddiness or that the accused Chhagan was not feeling well for the last one month or that he was running after the village children or the cattle heads does not establish that he was a person who would be called *non compos mentis*.

As guilt of the accused had been brought home beyond any manner of doubt, he was not entitled to any protection of Section 84 of the I.P.C., hence the appeal was dismissed.

In *re Balagopal*,[35] the appellant Balagopal was convicted by Assistant Session's Judge of Madras of offences under Section 302 for having committed the murders of his wife and son by cutting them with knife and was sentenced to imprisonment for life for each separate offence. The relations of the accused with his wife were cordial. However, there was evidence that the accused suffered from schizophrenic reaction paranoid. Thus, plea of insanity was raised on behalf of the appellant.

The court held that the two murders were of a brutal nature, and the appellant had literally hacked to death his wife and his tender child for no apparent reason whatsoever. All the circumstances coupled with the testimony of the doctor who treated the appellant for five or six days for schizophrenic reaction paranoid led to the conclusion that the appellant would not have been in a position to understand whether he has committed a particular act which was wrong or contrary to law.

In this case there was every indication that the appellant when he committed these murders by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The court, therefore, allowed the appeal and set aside the conviction.

In *B.S. Tanti* v. *State of Assam*,[36] the appellant had killed a girl aged 13 years and injured three other persons. He was sentenced to imprisonment for life under Section 302 and rigorous imprisonment for three years under Section 326 of the I.P.C. The appellant took the plea of insanity. The evidence of accused's wife made it clear that after 2 years of their marriage her husband had become mad and often assaulted her. Some days before, the occurrence, he again turned 'mad' and was in such state for the last two years. There was therefore, little doubt about the alleged insanity of the appellant.

The court held that there are various degrees of insanity known to the medical man or the psychiatrist, but the law does not recognise all kinds of insanities legal insanity as contemplated by Section 84 of the I.P.C. is that unsoundness of mind in which a person completely looses his cognitive faculties and is incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law.

In the present case, from the evidence on record, it appeared that the appellant did not loose his cognitive faculties completely. As the appellant fled away from the place of

occurrence, his conduct ruled out that he did dot know the nature of his act, on the contrary, he apprehended that prosecution witnesses would catch and punish him.

In these circumstances the plea of insanity as contemplated under Section 84 of the I.P.C. had to be rejected.

In *State* v. *Lilanand Pathak*,[37] the accused killed his cousin's wife with an axe by giving two blows on her head and one on the throat. Thereafter, he made a confessional statement before the magistrate from which he did not resile in the committing court as well as in the session's court. In that confession the accused stated that he killed his cousin's wife because a conspiracy to kill him was started from her house and she played the part of heroine in it.

The court held that the fact that the accused made a clean breast of the matter and confessed his guilt would not go to show that he was of unsound mind nor would the fact that he caused his cousin's wife's death over trifling matter warrant a conclusion that the accused was not a sane person especially when there was some motive for the crime.

In *Kesheorao* v. *State of Maharashtra*,[37a] the accused was charged with attempt to murder his daughter-in-law under Section 307. He had inflicted as many as 16 injuries with a spear blade on the body of his daughter-in-law. He was sentenced to R.I. for a period of 7 years and to pay a fine of Rs. 100 in default to suffer further R.I. for one month. So the accused filed the appeal against conviction.

The court observed in this case that insanity is different from eccentricity or strange behaviour. Eccentricity or strange behaviour or a mental upset not amounting to insanity as known to the law, would not absolve a person from the consequences of his act. There was no evidence of alleged insanity of the accused on the record so as to bring the accused within the exemption of section 84.

In order to establish a defence on the ground of insanity it

must be established that at the time of doing the act, the accused was labouring from disease of mind under such defect of reason as not to know the nature and quality of the act, he was doing or if he did know it, he did not know that what he was doing was wrong. If he knew it, he would be responsible. The mere fact that on earlier occasions, a person had suffered from derangement of mind or had subsequently at times behaved like a mentally deficient person is *per se* insufficient to bring his case within the exemption provided by Section 84.

In *Siddheshwari* v. *State of Assam*,[38] the accused's mother was convicted under section 302 for killing her 3 years old ailing daughter. There was nothing to show, under what circumstances the accused had taken the life of her daughter, nor there was anything to show as to what, was the nature of illness, the daughter was suffering from and since when.

The defence counsel raised the plea that the accused Siddheswari had committed the offence due to mental derangement.

The court held that to get the protection of Section 84, it is necessary that the person concerned by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. There was nothing before the court to satisfy if mental department of Siddheswari was of the nature contemplated by Section 84. The case, therefore, was not covered by the general notion of insanity. Though in English law mercy killings are treated as manslaughter and enables the judge to reduce or extinguish the sentence there is no provision in India parallel to Section 2(1) of the Homicide Act, 1957. Thus, mercy killing due to impairment of mental faculties is no exception under Indian law. However, "impulsive insanity" is a type which can come near mercy killing. The impulse to kill in such a case is sudden, instantaneous, unreflected and uncontrollable. The mental impulse which led to the commission of the crime has to be irresistible and not only unresisted to regard the same as impulsive insanity. The mere fact that it was committed on a sudden impulse is not sufficient in the context.

In *Surya Prasad* v. *State of Orissa*[39] the petitioner had been convicted under Section 307 I.P.C. and had been sentenced to undergo R.I. for four years on the allegation that he attempted to commit murder by stabbing knife on a girl aged 15 years but was unsuccessful in his attempt. The motive was that the petitioner persuaded the victim girl to marry him but the girl refused. The accused raised the plea of insanity.

The court relying on *Dayabhai Chaggan Bhai Thakkar* v. *State of Gujarat* AIR 1964 S.C. 1563 held that every type of insanity recognised in medical science is not legal insanity. There can be no legal insanity unless the cognitive faculties of mind are destroyed as a result of unsoundness of mind to such an extent as to render the accused incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The pattern of crime the manner and method of its execution and the behaviour of the offender after the commission of the crime furnish some of the important clues to ascertain whether the accused had no cognitive faculty to know the nature of the act or that what he was doing is either wrong or contrary to law. In order to determine the insanity of the accused, a court may rely not only on defence evidence but also on what is elicited from the prosecution witnesses as well as on circumstantial evidence consisting of the previous history of the accused and his subsequent conduct in the surrounding circumstances including absence of motive. If the evidence produced raises a reasonable doubt in the mind of the Judge as regards one or the other of necessary ingredients of the offence, the judge has to acquit the accused.

In the present case the accused was hospitalised for unsoundness of mind three months before the occurrence and was recommended by the doctor for examination by a specialist and in the morning of the occurrence he quarrelled with his mother and pelted brickbats and after stabbing the victim produced the knife before the police.

All these facts showed that the accused was insane within the meaning of Section 84 and was directed to be released.

In *Nakula Chandra Aich* v. *State of Orissa*,[40] the appellant Nakula Chandra Aich was convicted under Section 302 I.P.C. of having committed the murder of one Akuli Baral and was sentenced to undergo imprisonment for life. The accused raised the plea of insanity.

But the court held that although the mind of the appellant was deranged it was not a derangement that affected his cognitive faculties. He knew that he was causing the death of the deceased and he also knew that he was doing something wrong and contrary to law. Although there was no motive for the commission of the crime but mere absence of motive on the part of the appellant to cause the death of the deceased can't establish the defence that the appellant was insane at the time when he committed the offence. So, the appellant was rightly convicted of murder.

In *Nandeswar Kalita* v. *State of Assam*,[41] the accused was convicted for the offence of murder punishable under Section 302 I.P.C. and was sentenced to suffer R.I. for life for the murder of a child aged four years. Plea of insanity was raised on behalf of the accused.

The court did not accept the plea and held that the accused was not in such a state of mind as to be entitled to the benefit of Section 84 I.P.C. The accused had failed to satisfy the court that when he committed murder of the child, he was not capable of, knowing the nature of the act and that what he was doing was either wrong or contrary to law. There was no evidence of the previous history of the mental condition of the accused.

In the present case, the conduct of the accused did not show any abnormality of mind prior to and at the time of the occurrence, so appeal was partly allowed.

In *Rajan* v. *State of Kerala*,[42] the appellant was convicted under Section 302 for the murder of his elder brother's three-year old son by cutting the child with a sickle and severing the head. He was sentenced to undergo imprisonment for life. The

conviction and sentence were challenged in this appeal.

At the trial, the appellant set up the defence of insanity. However, the court held that the appellant at the time of the incident or his arrest did not show any abnormality according to prosecution witnesses. After the trial, the appellant was under observation and treatment in the mental hospital.

The court held that insanity is not *per se* a defence under Section 84 I.P.C. which embodies fundamental maxim of criminal law that an act does not constitute guilt unless done with a guilty intention. To establish that the act done is not an offence, it must clearly be proved that at the time of the commission of the act, the accused was suffering from legal insanity as defined in the section. Under Section 84 a person is legally insane when he is incapable of knowing the nature of the act, i.e., the physical act which is done or that he is doing what is contrary to law. The absence of the motive or the attachment of the accused with the victim or the ghastly nature of the crime is not relevant consideration in the absence of the positive proof that the mental faculties if the accused were materially impaired, at the crucial time by reason of unsoundness of mind.

It was further held that the accused at the time of committing the crime knew that what he was doing was wrong and after committing the act showed consciousness of guilt and made efforts to avoid detection. And though the motive urged by the prosecution was no doubt feeble, the evidence clearly negatived the plea of insanity. Hence, the accused was not entitled to the protection of Section 84.

In *Khageshwar Pujari* v. *State of Orissa*,[43] the appellant Khageshwar Pujari was convicted under Section 302 I.P.C. and sentenced to undergo R.I. for life for murdering his daughter aged 2½ years.

The learned counsel for the appellant raised the plea of insanity of the accused and alleged that the appellant at the time of occurrence was labouring under mental incapacity

covered by the general exception engrafted under Section 84 I.P.C.

The court held, "Section 84 of the code casts the burden on the accused to adduce evidence and prove that at the time of the occurrence his mental condition was such that he did not know what he was doing. In such a case, a duty is also cast on the court itself to find out from the materials on the record, e.g. the conduct of the accused, as to whether any doubt arises in the mind of the court that at the time of occurrence the accused was not in a fit mental condition to have the requisite *mens rea* required under Section 299 of the Code.

The court should consider the question of mental state of the accused not during trial but at the time of commission of the offence on the basis of evidence adduced by the prosecution. In the instant case the accused appellant came suddenly and dealt an axe blow on the deceased, a girl of $2\frac{1}{2}$ years. There was no motive behind the act and unless the accused was suffering from abnormality it was not expected of him to have behaved like that and kill his own daughter. At the crucial point of time the accused was not in a fit mental condition and it is clear that he did not know the nature of his act or that he was doing what was either wrong or contrary to law as no body would kill his own daughter if in sound state of mental health.

Therefore, the order of conviction and sentence passed against the appellant was not sustainable in law. In *Prakash* v. *State of Maharashtra*,[44] the appellant accused was charged with the murder of one Balu Shivaba Naik and was convicted for the same. By the present appeal, he challenged the said order of *Conviction and Eventual Sentence Imposed by the Learned Sessions Judge*..

The accused took the plea of insanity. There was evidence on record of the insanity of the accused. The question that arose for determination in the present case was that whether on the day of incident and during the event that resulted in homicidal death, the accused was affected by the mental

disorder and by reason of that was not knowing the nature of incident.

The court held that to apply the provisions of section 84 so as to relieve the person from criminal liability it is well settled that the conduct of the accused preceding the act and also his conduct during the course of complained incident all call for close scrutiny.

It was satisfactorily shown that prior to the day of incident, the accused was not keeping good mental health. He was subjected to fits of violence as well as fits of hallucinations.

In the present case there was no motive for crime, and the behaviour of the accused was totally irrational and there was evidence that he was hearing sounds when there were no actual sounds at all. After his arrest, the accused was admitted to the mental hospital and treated for about five months. The diagnosis then as was spoken to by the doctor was schizophrenia. In these circumstances the accused was entitled to the protection of Section 84.

In *Veluswamy* v. *The State*,[45] the accused was convicted by the Additional Sessions Judge under Section 302 of the I.P.C. for the murder of his father, by hitting him with a grinding stone on his head, and sentenced to suffer imprisonment for life. The accused had murdered his father on latter's refusal to give money to him.

The learned counsel for the appellant raised the plea of insanity.

The court held that the only piece of evidence available in this case on which much reliance is sought by the learned counsel for the appellant was the admission made by the doctor that the disease noticed in the prisoner might have existed for about 2 to 3 years prior to his examination. It was, therefore, contended that the accused must have been of unsound mind at the time of commission of the offence. But according to evidence of prosecution witnesses, the accused was

not suffering from any kind of mental ailment prior to or at the time of the commission of the offence.

The court, therefore, concluded by saying that there was no material to come to the conclusion that the accused was of unsound mind at the time of this occurrence. The accused herein had newer behaved queerly or abnormally. He had grudge against his father for his refusal to pay him money. He threatened his father with death immediately and caused his death immediately. It meant that he understood the nature of his act. He was in full possession of his senses when he attacked his father. The offence, therefore, fall squarely within the ambit of Section 300 of the I.P.C. and Section 84 of the I.P.C. was not applicable.

In *Machi Parvaiah* v. *The State*,[46] the accused was charged with the murder of his mother by cutting her neck with an axe. According to the defence counsel the accused was of unsound mind and suffering from a fit of insanity and imbalance of mind and therefore, he committed the act. Learned counsel for the accused relied on the following circumstances in support of his plea of insanity :

(a) There was absolutely no motive for the accused to kill his mother.

(b) After committing the act the accused did not abscond from the scene of offence and did not try to conceal himself or the weapon with which he killed the deceased.

(c) The accused remained at the scene of offence and started weeping along with his sister that his mother died.

(d) The Paws stated before the investigating officers and also before the magistrate who recorded the statements under Section 164 Cr. P.C. that the accused was under the influence of evil spirits and behaving disorderly since two years before the date of offence.

(e) The act of the accused in killing the mother whom he

had regarded with affection and without any motive speaks for itself in the sense that the accused acted in an extremely unusual manner and his extra ordinary conduct and behaviour in committing the act and in sitting at the scene of offence weeping indicated that the act was committed by the accused at a time when he was of unsound mind.

The court held, that in case of murder where the conduct of the accused demonstrates abnormality it is the duty of the prosecution to subject the accused to a medical examination immediately especially when during the investigation the witnesses stated that the accused was suffering from mental disorders periodically and place before the court all evidence that could be available to show that the accused was in a proper state of mind when he committed the alleged offence so as to rule out the plea of a mental disease or insanity that may be raised at the trial.

The court further held that the doubt could not be excluded that the accused acted in a fit of insanity, while inflicting injuries on his mother's neck with his axe resulting in her death without being aware of the nature of his act and consequences thereof. Therefore, Section 84 was applicable and the accused being entitled to the benefit of doubt could not be convicted of murder under Section 302.

In *Kutappan* v. *State of Kerala*,[47] the appellant entertained suspicion about the chastity of his wife, whom he later on killed. After the alleged killing he took the head of his wife in his hand entered the Panchayat. He was convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life.

The court held that a person is legally insane when he is incapable of knowing the nature of the act or that what he was doing was wrong or contrary to law. Incapacity of the person on account of insanity must be of nature which attracts the operation of Section 84 I.P.C. From the doctor's evidence the accused was suffering from mental illness which developed

into paranoid schizophrenia. Due to this disease he was incapable of knowing the nature of the act and hence entitled to acquittal by virtue of Section 84.

(a)-iii) *Appraisal* : A review of the cases shows that Section 84 lays down two tests of insanity, either of which must be present to entitle a person to get the protection of section. But if we examine the cases, it becomes very difficult to know which, test is more suitably applicable. Because in certain kinds of insanities for example in automatism, idiocy etc. the person does not understand the nature of the act nor does he know at the time of doing the act that it is wrong or contrary to law. The point stressed by the court is that we person must be unable to understand the nature of the act that what he is doing is either wrong or contrary to law at the time of doing of the act, i.e., diseased condition of mind must exist at the time of commission. In the cases mentioned above, a person is normal otherwise and knows the distinction between right and wrong. In such cases both the tests as laid down in Section 84 are present.

The "right" and "wrong" test is one of most striking example of the law being ignorant of developments in psychology and other fields. The criminal law of India is at least a century out of date in this respect. It incorporates the psychology of the early nineteenth century which regarded the brain as a bundle of different sections, each working independently of the other parts. However, according to modern notion of psychology the mind can't be split into water tight unrelated, autonomously functioning, compartments like knowing, willing and feeling. There are certain psychologists,[48] who believe that a person who is mentally ill, howsoever advanced his psychosis may be, knows the difference between right and wrong in the bitral sense of the phrase. The consequence of the present law is that every case where insanity has been pleaded as a defence, has to be fitted into the straight jacket of Section 84 notwithstanding the current advances in psychiatric knowledge. I submit that the law should be suitably modified to bring it in time with modern psychiatric advances.

Judicial Parameter : Under this head we are concerned with the tests laid down by the various high courts which are not covered by Section 84. The Calcutta High Court had tried to formulate a third test in addition to the two tests which fall under Section 84. This test was laid down in the case of *Ashiruddin Ahmed* v. *The King*.[49] The facts of this case are as follows. The accused in his dream was commanded by someone in paradise to sacrifice his son of five years. The next morning the accused took his son to a nearby mosque and killed him by thursting a knife in his throat. He then went straight to his uncle but on finding a chowkidar nearby took the uncle to a tank at some distance and slowly told him the story.

The court held that the three elements necessary to be established under Section 84, any one of which must be established by the accused to obtain the benefit of provisions are :

(1) Nature of the act must not be known to the accused, or

(2) He should also not know that the act was contrary to law, or

(3) That the act is wrong.

In the present case the accused knew the nature of the act and also that the act is contrary to law but he did not know that act was wrong.

(1) *Moral Wrong Test* : Calcutta High Court has in this case added a third test in the form that the accused will be protected by Section, 84, if he did not know that his act is wrong in addition to the requirement of inability to understand the nature of the act and the absence of knowledge that the act is contrary to law. However, if we look at the observations made by Calcutta H.C., it seems that it has split the second test, i.e., right and wrong test into two parts. Under Section 84 it is required that the accused should either not know that his act is contrary to law or the act is wrong. Under Section 84 either of

these two conditions must be present. But Ashiruddin's case lays stress on the point that the accused should neither know that his act is contrary to law nor should he know that his act is wrong. The words contrary to law also mean wrong in law. Thus, the word wrong here conveys the meaning moral wrong. In the present case also the accused did not know that it is morally wrong to kill some person although he knew that his act is contrary to law and he understood the nature of his act as well. However, he had the belief that his act was morally justified.

(ii) *Appraisal* : But the formulation of these three exclusively independent tests of insanity by Calcutta High Court may lead to serious consequences because of the following reasons.[49a]

First : An accused will thus be privileged to plead in every case that he had seen a dream enjoining him to do a certain criminal act and believing that his dream was a command by a super natural powers, he was impelled to translate the dream into action, and he would be therefore protected by Section, 84. The court will have no independent means of ascertaining the truth of the defendants statement. The defence of insanity is, therefore, likely to be misused.

Second : The court's interpretation that 'wrong' or "Contrary to law" are two independent tests runs counter to its earlier interpretation in *Geron Ali* v. *Emperor*[50] where it found 'wrong' or "contrary to law" as forming one test only. It is really embarrassing to note that Mr. Justice Roxburg, who was a member of the division bench in both 'Geron Ali' and 'Ashiruddin Ahmed' did not observe or clarify these obviously conflicting decisions. One would have expected a more reasoned and elaborate judgment from the Calcutta High Court particularly in view of the fact that it represented a departure from its earlier decision on the point.

Third : According to Section 84 the accused should be "incapable" of knowing whether the act being done by him is right or wrong.

In an Allahabad case (*Lakshmi* v. *State* AIR 1959 All. 354) Beg J. criticised the Calcutta view and said :

"The capacity to know a thing is quite different from what a person knows. The former is a potentiality, the latter is a result of it. If a person possesses the former he can't be protected in law, whatever might be the result of his potentiality. In other words, what is protected is an inherent or organic incapacity and not a wrong or an erroneous belief, which might be the result of a perverted potentiality.

(3) Medical Parameters

(i) *Introductory* : According to medical science, insanity is another name or term for mental abnormality due to various causes and existing in various degrees, and even an uncontrollable impulse driving a man to kill or wound comes within its scope. It is[51] a disordered state of mind in which an individual looses the power of regulating his actions and conduct according to the rules of the society in which he is moving.

Every mentally abnormal person is not *ipso facto* exempted from criminal liability since medical parameter of insanity varies considerably from legal definition of insanity. Thus, a person who is incapable of managing his own affairs and his activities are harmful to others is, medically insane. In Medical terminology, insanity is not a particular disease but encompasses a number of mental disorders such as psychoneuroses psychoses, psychopathic states character disorders sexual perversions epilepsy, psychosomatic diseases mental deficiency or amentia etc.

(4) Distinction between Legal and Medical Parameters

There is a clear distinction between the legal and the medical parameters of insanity. An accused person may be suffering from some form of insanity in the sense in which the term is used by medical men but may not be suffering from unsoundness of mind as contemplated by Section 84. There can be no

legal insanity unless the cognitive faculties of the mind are as a result of unsoundness of mind so completely impaired as to render the offender incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law.

The distinction between a medical view of insanity and a legal view of insanity is important to be considerd here. Let us bring out the distinction between the two.

First : The medical and the legal standards of sanity are not identical. From the medical point of view, it is probably correct to say that every man at the time of committing the criminal act, is insane, i.e., he is not in a sound state of health and therefore, needs treatment. But from the legal point of view, a man must be held to be sane so long as he is able to distinguish between right and wrong, so long as he knows that the act done is wrong or contrary to law. Also, the persons whom medical science would pronounce as insane do not necessarily take leave of their emotions and feelings such as hope, fear, frustration ambition and revenge etc. Fear may exercise its influence over them and threats, may have a deterrent effect. Such persons though insane, would refrain from committing any acts of violence of mischief if more powerful men are present. In the words of Bramwell. B. "there are mad men who would not have yielded to their insanity, if a policeman had been at their elbow."

Second : To establish the defence of insanity the mental condition referred to in the section must exist at the time when the act was committed. If a man is found to be insane six or seven hours after committing the offence, it raises no presumption that he was of unsound mind at the time of commission of the offence. For the purposes of legal insanity, unsoundness of mind at the crucial time of the commission of the act only is relevant; medically a man may be insane at any time.

Third : Also while a court of law commonly looks for some clear and distinct proof of mental delusion of intellectual aberration existing previously to or at the time of the

perpetration of the crime, a medical man recognises that there may be delusion springing up in the mind suddenly, and not revealed by the previous conduct or conversation of the accused. Thus the tests employed by the medical men to detect insanity are different from those employed by the lawyer. He infers insanity from the absence of motive, of any attempt to escape, and of any accomplice. The fact that the person was conscious of the crime is immaterial. On the other hand, the legal test of the existence of insanity is "conduct". A lawyer means by madness "conduct of a certain character" while a physician means by it "a certain disease one of the effects of which is to produce such conduct."

Fourth : To a medical man the motivation for an act is of primary importance whereas motive is not of decisive importance in determining legal insanity.

Fifth : The legal view of insanity prevails over the medical view, when there is a conflict between the two. It is important to recognise that in all aspects of the relationship between psychiatry and the law, it is in fact the law which calls the tune.

Illustrative Cases

The first case that denotes the distinction between legal and medical insanity is *Queen Empress* v. *Lakshman Dagdu.*[52] In this case the accused brutally killed his young children with a hatchet. He had shown no previous symptoms of insanity. The reason he ascribed for the crime was that he was ill with age, and the cry of the children vexed him. After killing them he went to sleep. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. His manner was quiet when he was questioned and there was no attempt at concealment. He made a full confession of his guilt but had shown no signs of sorrow or remorse. It was held that as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, held guilty of murder.

Judged from medical point of view there was in this case, no premeditation, the idea having occurred to the accused with suddenness, there was no precaution taken, no concealment or attempt to escape, no sorrow, or remorse, and the act was done without the aid of an accomplice. The court conceded that if the case had to be decided by medical tests, the accused would have to be acquitted, but it felt constrained to apply principles which were judicially recognised, though it recommended the case for governmental clemency. The next case is *Chajju* v. *Emperor*.[53] In this case the medical evidence, given by gentlemen of professional eminence, and unimpeachable veracity, was distinctly in favour of the accused. The evidence disclosed that the accused must have been insane because he was a man of high character that he was suffering from debility, and that in all probablity he committed this very extraordinary and wholly motiveless crime in a fit of melancholia.

The court held that this evidence founded on *a priori* grounds, it differed from the theoretical views expressed by the medical experts and observed.

They have regarded the case from the point of view of merely of medical men, and so far as the case before us is concerned, their opinions are admittedly theoretical. So that the accused must have been insane and that it seems impossible that he could have realised what he was doing because he was a man of blameless antecedents, was at the time in a bad state of health, and was the author of a wholly objectless crime.

The court remarked that while all these facts were undoubtedly entitled to consideration the important question for a court of law was whether when the accused committed the act, he was by reason of unsoundness of mind incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law.

In *Ambi* v. *State of Kerala*,[54] the accused, his wife, his mother and his sister were living together. In the absence

of his mother and sister, who were away on a visit, the accused began to maltreat and beat his wife. On the day of occurrence the accused went to kitchen and asked his wife, "whom are you looking at and with whom are you talking ?" The deceased denied the insinuation. The accused asked his wife (the deceased) to give him all her jewels, which she did. He then went to the kitchen and returned with a chopper and hit the deceased on her head, as a result of which she died. The accused then on seeing three neighbours coming towards the house threatened them with dire consequences if they dared to enter the house. He closed the door and went inside. Thereafter, he told these persons that he had killed his wife and that they could inform the authorities. He also made an extra judicial confession to two other persons and said that the village munsiff could do whatever necessary.

At the trial the superintendent of the mental hospital deposed that the accused was suffering from schizophrenia. The doctor spoke of the symptoms which he had noticed, no inclination to secure employment loss of all initiative, a sense of just drifting in life, little touch. With reality, living in fantasy, poor ideas, unsatisfactory sleep, taking life easy and capable of being misled. Commenting on the evidence the court said : "The evidence of the doctor would at the most show that the accused was not mentally a normal person. This can't amount to legal insanity." Examining the entire evidence the court was of the opinion that the conduct of the accused was consistent with that of a sane, but highly jealous husband. His conduct was indicative of his being conscious of the nature of the act in that he was prepared to suffer the consequences of his wrongful act. And if he was conscious of the nature of the act, he must be presumed, notwithstanding the medical evidence, to have been conscious of its criminality.

In *State* v. *Lemos*,[55] the accused and his family and also, the brother of the accused and his family, were occupying two parts of the common family house. The two mothers were not on talking terms for the last ten or twelve years. Gabriel Lemos was their neighbour and also a distant relation.

He was involved in a law suit with the wife of the accused wherein a prohibitory order was passed against his wife about four months before the incident in which the accused killed the wife of the Gabriel and injured others. The accused, a seaman, had come home only eight days prior to the incident on the day of occurrence the accused went to his brother's wife's house and the children ran out, out of fear as their mother was away, he attacked them with a stick, stones and bottles which he had brought with him. This attack was without any provocation or warning. Soon after he started throwing stones at the house of Gabriel, and when Gabriel and his wife came out he attacked them with a stick. Gabriel's wife was injured on the head, and died from the same in the hospital after five days. The police arrived at the scene and were also attacked by the accused as a result of which one of the constables sustained knife wounds. The trial court, took the view that the accused was protected by Section 84, and on appeal the acquittal was maintained.

The court observed, "Section 84 mentions the legal test of responsibility in case of alleged unsoundness of mind. It is by this test, that the criminality of acts is to be determined. This section in substance is the same as M'Naghten Rules. These rules in spite of long passage of time are still regarded as authoritative statement of law as to criminal responsibility. He seemed to be under delusion and hallucination when he assaulted the deceased. A person labouring under delusion and hallucination is to be in the same position as an unsane man. This is not a case of a morbid man thirsting for human blood. This is a case of sudden impulsive insanity which had its roots in schizophreneia.

In *Tubu Chetia* v. *The State of Assam*,[56] the accused was charged with the murder of his wife and minor son under Section 302 I.P.C. by the Session's Judge. The accused raised the plea of insanity and appealed to High Court.

The court held that there is a great difference between medical insanity and legal insanity. Unsoundness of mind as contemplated by Section 84 I.P.C. is legal insanity which means

the state of mind in which an accused is incapable of knowing that he is doing what is either wrong or contrary to law. In other words his cognitive faculties are such that he does not know what he has done or what will follow from his act. In the present case from the evidence there was no doubt that the appellant had some sort of mental disorder at the relevant time. But the question was whether it was legal insanity as to give the accused the benefit of Section 84. As from the evidence legal insanity of the accused was completely negatived, he was not entitled to the benefit of Section 84.

In *B.S. Tanti* v. *State of Assam*,[57] the accused appellant had killed a girl aged 13 years and injured three other persons. He was sentenced to imprisonment for life under Section 302 and rigorous imprisonment for three years under Section 326 of the Penal Code. The accused took the plea of insanity.

The court held that there are various degree of insanity known to the medical man or psychiatrist, but law does not recognise all kinds of insanities. Legal insanity as contemplated by Section 84 of the Penal Code is that unsoundness of mind in which a person completely looses his cognitive faculties and is incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law. In the instant case from the evidence on record it did not appear that the appellant completely lost his cognitive faculties. As the appellant after attack fled away from the place of occurrence, his conduct ruled out that he did not know the nature of his act, on the contrary he apprehended that prosecution witnesses would catch and punish him.

In these circumstances the plea of insanity as contemplated under Section 84 I.P.C. had to be rejected.

In *Kesheorao* v. *State of Maharashtra*,[58] the accused assaulted his daughter-in-law and inflicted as many as 16 injuries on her person. He was convicted by A.S.J. under Section 307 and sentenced to R.I. for a period of 7 years and to pay a fine of Rs. 100 in default to suffer further R.I. for one month.

The court held that insanity is different from eccentricity or strange behaviour or a mental upset not amounting to insanity as known to the law would not absolve a person from the consequences of his act. The court further held that there was nothing on record to indicate that even assuming the accused was queer or eccentric or accustomed to be-labouring others or was mentally upset by reason of his wife leaving him two months earlier, he was at the time of assaulting his daughter-in-law, in such a state of mind as to be incapable of knowing the nature or consequences of his act on that what he was doing was wrong or contrary to law, so as to attract the exemption under Section 84 I.P.C.

Legal insanity is not medical insanity and must not be confused with medical insanity. It is only the legal and not the medical aspect of the question that the court is concerned with. Where a plea of insanity is raised, it is for the accused to establish it so as to bring the case within the exemption provided by Section 84. If he does not establish it, he must fail.

In *Surya Prasad* v. *State of Orissa*,[59] the petitioner had been convicted under Section 307 I.P.C., and had been sentenced to undergo R.I. for four years on the allegation that he had attempted to commit murder by stabbing knife on a girl aged 15 years but was unsuccessful in his attempt. The motive was that the petitioner persuaded the victim girl to marry him but the girl refused.

The accused took the plea of insanity at the time of occurrence. The court held that every type of insanity recognised in medical science is not legal insanity unless the cognitive faculties of mind are destroyed as a result of unsoundness of mind to such an extent as to murder the accused incapable of knowing the nature of the act on that what he is doing is wrong or contrary to law. The pattern of the crime, the manner and method of its execution and the behaviour of the offender before or after the commission of the crime furnish some of the important clues to ascertain whether the accused had no cognitive faculties to know the nature of the act or

that what he was doing is either wrong or contrary to law.

(5) Evaluation of Legal and Medical Parameters

Section 84 of I.P.C. lays down two parameters to adjudge the alleged insanity of the accused. One of them is that if the person does not understand the nature of the act he is doing, he is protected by Section 84. The other test is that he does not know that what he is doing is either wrong or contrary to law. These are the two legal parameters, i.e., the tests laid down by the courts to judge the insanity of the accused. A person will only be protected by Section 84 if his unsoundness of mind is covered by either of these two tests. On the other hand, doctors apply altogether different standard for adjudging insanity. This a person may be legally insane without being medically unfit or *vice versa*.

The legal parameters laid down by Section 84 of I.P.C. are based on M'Naghten rules laid down in the famous case of Daniel M'Naghten which was decided in 1843. These rules have evoked strong criticism at the hands of medical profession as well as the lawyers. The medical men have maintained during the last hundred years that the M'Naghten test is based on an entirely obsolete and misleading conception of the nature of insanity, since insanity not only or primarily affects the cognitive faculties but affects the whole personality of the patient including both the will and emotions. Law by its nature is dynamic and, therefore, it should be changed to keep pace with changed notions of psychiatry and medical science.

The foregoing brief survey of the judicial view of the statutory law of insanity in India brings out emphatically the need for a change in it. The Indian law[60] continues to recognise and apply the discredited M'Naghten Rules. The degree to which the defendant's self-control is lost is not taken into consideration. Hence, the legal view of insanity is very much different from the medical view of insanity. Could it be attributed to paucity of many qualified psychiatrists in India or does it represent the generally callous attitude towards the unfortunate and the ill in general ? Probably both.

M'Naghten Rules are not only too narrow in their content but even the machinery provided by the procedural law of India for applying the substance of even those regid rules is not only defective in structure but also crude and callous in its working. Mental deficiency short of M'Naghten rules, as for example irresistible impulse, is no excuse, although the more enlightened High Courts took note of such deficiency for the purpose of mitigating punishment.

There is an urgent need for reforming the law of insanity in India. Difficulties begin with the term "unsoundness of mind", for it has a lay meaning, and these differ to a great extent. In the legal context itself it is used with differing meanings in various branches, e.g., under the Indian Contract Act, Indian Lunacy Act, Probate Cases, and I.P.C. it does not have the same content. We need a new term to denote the particular kind or degree of insanity or mental disorder which produces legal consequences. What concerns us here is the urgent need to connect the medical diagnosis of the mental condition of a particular individual with the legal tests of criminal responsibility.

Moreover, the confusion about legal meaning of 'right' and 'wrong' tests of insanity is one of the most striking instances of law being ignorant of developments in psychology and other fields. The Indian criminal law of insanity is at least a century old in this respect. It conceives of the brain as a bundle of different sections each working independently of the other parts. However, according to modern psychology the mind can't be split into watertight, unrelated autonomously functioning compartment like knowing, willing and feeling. Modern psychologists like Dr. Bernard L. Diamond[61] tell us that "just about every defendant, no matter how mentally ill, no matter how far advanced his psychosis knows the difference between right and wrong in the liberal sense of the phrase. The consequences of the present law is that every case where insanity is pleaded as a defence has to be fitted into straight jacket of Section 84, notwithstanding the current advances in psychiatric knowledge. It also involves the psychiatrist in that he 'must' either renounce his values with all their medical

humanistic implications thereby becoming a puppet doctor used by the law to further the punitive and vengeful goals demanded by our society, or he must commit perjury if he accepts a literal definition of the M'Naghten rules.

I submit, therefore, that the law should be suitably modified to bring it in line with modern psychiatric advances.

The underlying reason for exemption of an insane person from liability for the commission of an offence is that the same has free will and can choose for himself while the insane has no such freedom of choice. Why then an irresistible impulse should not be treated on the same footing as insanity. Under the existing law if the accused when he committed the offence, was same enough to percieve the difference between right and wrong with respect to that act, the fact that an irresistible or emotional impulse forced him to act as he did, will not be accepted as a defence to criminal liability. The law should not, it is submitted, hold such a man guilty.

One of the fundamental fallacies of Section 84 is its "all of none" approach. One is either sane and so totally responsible, or insane and so not responsible at all. Such concepts have been totally and irrevocably rejected by modern psychiatric thought according to which neither normal persons nor mentally disturbed persons are ever all or "none" in their psychological functioning. Since modern psychiatry recognises gradations of disturbances from the sane to insane, law needs to recognise the same in order to fit the punishment to the offence, it should be elastic in its approach to the question of responsibility. In between states of irresponsibility ought to be recognised. Steps must be taken to correlate partial insanity with partial responsibility. We would thus come to have a legal spectrum of an infinitely graduated scale of responsibility corresponding closely to the psychological reality of human beings.

NOTES AND REFERENCES

1. Gaur's Penal Law of India, 10th Edition 1982, p. 603.
2. Blackstone, Commentaries, Vol. IV, p. 304.
3. Chaggan *v.* State, 1976 CRI. L.J. at 671.
4. Sec. 466 (Old) Cr. P.C.
5. AIR 1971 SC 778.
6. AIR 1972 SC 2443.
7. 1975 CRI. L.J. 1458.
8. 1983 CRI. L.J. 619.
9. 1985 CRI. L.J. 196.
10. Dr. Hari Singh Gaur, *supra*, note 1, p. 629.
11. K.M. Sharma, Defence of Insanity in Indian Criminal Law, JILI, Vol. 7 (1965), p. 325.
12. Rambharose *v.* State of M.P., 1974 M.P.L.J. 406.
13. Mayne's Criminal Law of India, 3rd Ed., para 162, p. 413 cited with approval in Baswantrao Bajirao *v.* Emperor AIR 1949 Nag. 66 at pp. 71-72.
14. (1916) 12 Cr. App. R.21.
15. (1952) 2 Q.B. 826.
16. Principles of Law of Crimes in British India (1982), p. 279.
17. Rambharose *v.* State, *Supra*, note 12.
18. 216 N.Y. 324.
19. Law of Crimes, Vol. I, p. 28.
20. AIR 1928 Calcutta 238.
21. (1913) CRI. L.J. 81 (Oudh).
22. (1902) I.L.R. 29 Cal. 493.
23. AIR 1932 All. 233.
24. AIR 1947 Pat. 222.
25. AIR 1958 Panjab 104.
26. (1962) 2 CRI, L.J. 135 (Kerala).
27. (1896) I.L.R. 23 Cal. 604.
28. AIR 1959 Mad. 239.
29. AIR 1966 S.C. p. 2.
30. *Supra*, note 6.
31. *Supra*, note 5.
32. AIR 1974, S.C. 216.
33. *Supra*, note 7.
34. See *Supra*, note 3.
35. 1976 CRI. L.J. 1978.
36. 1977 CRI. L.J. 296.
37. 1977 CRI. L.J. 513.

37a. 1979 CRI. L.J. 403.

38. 1981 CRI. L.J. 1005.
39. 1982 CRI. L.J. 931.
40. 1982 CRI. L.J. 2158.
41. 1983 CRI. L.J. 1515.

42. 1984 CRI. L.J. 874.
43. 1984 CRI. L.J. 1108.
44. *Supra* note 9.
45. 1985 CRI. L.J. 981.
46. 1985 CRI. L.J. 1824.
47. 1986 CRI. L.J. 271.
48. Bernard L. Diamond, Criminal Responsibility of the Mentally Ill, Stanford Law Review, December 1961.
49. AIR 1949 Cal. 182.
49a. *Supra* note 11.
50. AIR 1941 Cal. 129.
51. Modi's Text-Book of Medical Jurisprudence and Toxicology (16th Edition) (1967), p. 384.
52. AIR (1886) ILR 10 Bomb. 512.
53. (1910) II G.L.J. 105 (Punjab).
54. See *supra* note 26.
55. AIR, 1970 Goa Daman and Diu.
56. 1976 CRI. L.J. 1416.
57. See *supra*, note 36.
58. See *supra*, note 37a.
59. See *supra*, note 39.
60. Boparai, Insanity under the Indian Penal Code : A Plea for Change, 1976, Criminal Law Journal, Vol. 82, p. 19.
61. *Supra* note 48.

4

CLASSIFICATION OF INSANITY

Psychiatric clinical entities are as discreet as other disorders. Mental illness may be classified in various ways. Courts encounter not only one type of insanity but a number of mental disorders. To a layman a person suffering from any kind of mental derangement is an insane but a professional like a lawyer or a doctor has to be very specific about the diagnosis of his patient. While under medical science any kind of mental disorder amounts to insanity, in law a person has to satisfy the tests laid down in Section 84 if he is to get the protection of that section. There are different kinds of insanities and the cases that come before the court exhibit different forms of mental disorders. Hence, a lawyer has to acquaint himself with various forms of insanities. Let us therefore give a detailed classification of insanity in this Chapter. Insanity may be classified according to medico-legal science as follows.

A. NEUROSES OR PSYCHONEUROSES[1]

Neuroses or Psychoneuroses develop in individuals predisposed by their constitutional make-up or what seems more important, by their early childhood environment and training where they encounter emotionally charged situation with which they can't cope. Although, the symptoms that develop seem inimical to the person's own happiness and welfare, they serve some unconscious purpose, e.g., the soldier's hysterical blindness keeps him out of battle.

1. Type of Neuroses

Neuroses may be classified into following five types :

(*a*) *Character Neuroses*

Character neuroses involves subtle and persistent distortions of characters of which the patient has little or no awareness. The character neurotic acts out his deep-seated inner conflicts.

(*b*) *Symptom Neuroses*

It involves symptoms of physical disfunction of which the person is quite aware, although he may be mistake ascribe it to some diseased organ. The symptom neurotic is generally subject to alternate periods of improvement and increased severity.

The symptom neuroses are of several types, of which the most generally recognised are anxiety neuroses, hysteria or conversion neurosis obssessive compulsive neurosis and neurasthenia.

(*i*) *Anxiety States* : This neurotic condition is often manifested by chronically recurring fears or panic states without any basis or reason. They show anxiety overtly as distinguished from character neurotics who rarely if ever show much overt anxiety or complain of it, because they reduce or dissipate their mounting tension and anxiety by acting out their neurotic inner conflicts.

(*ii*) *Hysteria* : It is a very common form of insanity and there are two chief types of hysteria, episodic disturbances of consciousness, and the occurrence of signs and symptoms of organic disease without any such disease in fact. The condition may rarely produce, multiple personalities—what is popularly called a Jekyll and Hyde condition. Most of the persons displaying such a condition are not hysterics and are quite conscious of the inconsistent and contradictory roles they are

playing. Hysterias producing the symptoms of a physical disease are known as conversion states. Practically every form of disease is simultated.

Criminality of Hysterics: Although the hysteria do not usually lead to criminal conduct, there is a significant group of criminal offenders closely akin psychiatrically to those in hysterical states. Among them are many murderers. They are typically accidental or occasional offenders. They are not markedly neurotic in their day to day activities and their life-patterns have been commendably law-abiding, but they become overwhelmed and overpowered by some combination of circumstances. They often commit suicide afterwards. Their crimes are carried out in a state of confused consciousness, or as the psychiatrists say, in a dissociated state. Their actions are almost automatic often these individuals are conscientious individuals who have been struggling with catastrophic personal problems for which they can find no solution. They usually possess mediocre intellectual endowment and are socially unsophisticated. Their crimes may be impulsive or premeditated. After they have once started carrying them out, they develop a state of dissociation that lasts out the crime, so they go through the various steps understandingly, but in a state of emotional numbness. Recollection of the crime is often incomplete, with a spotty amnesia, that may only partially clear up under sodium pentothal or other abreactive drug. Since these individuals can't be said to have been completely incapable of knowing the nature and quality of their acts and their wrongfulness they are generally held to be responsible and punishable.

Another bizzare hysterical reaction is known as the Ganser Syndrome. It occurs most often in persons awaiting trial or sentence by the court. It was apparently rather common in Germany in the early part of this century but is now rare. The most important symptom in the Ganser Syndrome is the patients near missing in tests of intellectual function. In simple addition, subtraction and multiplications, the correct answer is likely to be missed consistently by only one. In a true Ganser Syndrome, the patient is unaware of his mistakes

Although as said it appears typically in persons awaiting trial or sentence, it does not seem to affect the intellectual function sufficiently so, that the person can be said to be incapable to know right from wrong with respect to the crime charged.

(*c*) *Traumatic Neuroses*

Traumatic neuroses, the result of injuries and accidents, may be in a sense be considered a separate category of neuroses, but in another sense, they are not separate at all, for the symptomatology may to a large extent be that of an anxiety neuroses or a conversion hysteria.

Whether a given traumatic experience will produce a neurosis depends upon individual constitutional differences and upon various external circumstances. Constitutional capacity may depend in part upon previous experiences, upon health, upon the presence of fatigue due to hunger cold, or disease.

Persons suffering from the traumatic neuroses often show marked emotional instability with restlessness, crying spells, and even spells of rage. *Fenichel*[2] interprets these symptoms as discharges of excitations that were aroused in the traumatic situation but could not be discharged sufficiently. Criminal conduct may occur by reason of emotional instability or in a fit of rage attributable to the disorder, but crime is not typically associated with this disorder. It is of legal interest primarily in personal injury and workman's compensation cases.

(*d*) *Impulse Neuroses*

Another group of the neuroses consists of the obsessive compulsive disorders, also known as the psychasthenias. These are the illnesses in which the patient feels compelled to repeat some peculiar act over and over. These persons are acutely aware of their disorder and they do their best to resist, but sooner or later they feel compelled to perform their obsessive "rituals of action and thought". Dynamically, obsessions, compulsions and phobias are similar. They are symbolic

substitutes for feelings and thoughts that the individuals can't endure.

Impulse neuroses differ from the obsessive compulsive neuroses in that they involve morbid acts performed in the hope of achieving pleasure, whereas compulsive acts are painful and are perfound in the hope of getting rid of pain. The compulsive neurotic feels forced to do something he does not like to do. But the impulsive neurotic at the moment of his excitement feels the impulse as ego syntomic as something he wants to do to achieve pleasure even though he may feel guilty about what he is doing. Most crimes that can't be effectively resisted because of a neuroses are in this category, e.g., true kleptomania and pyromania.

(*e*) *Neurasthenia*[3]

Neurasthenia is characterised by complaints of chronic weakness, easy fatigability and sometimes exhaustion. Overwhelming weakness, weariness, and exhaustion constitute the whole of neurasthenia as defined in DSM-II (Diagnostic and Statistical Manual of Mental Disorders). There are no major distortions of thinking and behaviour in patients with neurasthenia. What is perhaps most characteristic is the appearance of listlessness, apathy and enervation that accompanies the inner sense of exhaustion. This type has no criminal importance.

(*f*) *Criminality of Neuroses*[4]

Lurid fiction has tended to give the public an exaggerated notion of the compulsive disorders in causing crime. On the other hand, the importance of deeply buried neurotic conflicts in explaining criminal conduct has probably been underrated. Also, a neurotic or even a psychotic condition may result from the commission and detection of a crime, arrest and imprisonment. The neuroses are typically border-line disorders, a few neurotics are insane within the legal test of responsibility, a few are clearly sane and a large number are abnormal to a degree that punishment, will have little or no effect and yet are punishable under the legal test.

B. PSYCHOSES

Psychoses is of two types :

Organic psychoses and functional psychoses.

Organic psychoses is further divided into Dementia and Epileptic psychoses or insanity.

1. Organic Psychoses

(*a*) *Dementia*[5]

This is a form of insanity, which is produced by the degeneration of mental faculties after they have been fully developed. Hence, it is not congenital but may occur at any period of life. It may be caused by organic diseases of the brain, or it may be the final result of acute insanities which do not tend to recover.

The symptoms may appear all of a sudden or gradually. When the attack is sudden, the patient passes into a condition of stupor without any emotional feeling and become an imbecile or idiot. In a slow attack there is a gradual degeneration of the mental faculties. He becomes listless and apathetic, does not take any interest in his dress, food, family or business. He can't fix his attention on any subject, memory becomes feeble or is lost. Judgment is impaired and his control over the emotional feeling is weakened. As the disease progresses from bad to worse the common instincts of volition are abolished.

Dementia is of following types :

(*i*) *Senile Dementia* : This condition results from the gradual decay of the body as well as the brain during old age and depends upon the degenerative changes of the arteries. It affects those people, who have a hereditary taint of mental aberration and who have led a strenuous life. The usual symptoms are that the patient tires more readily, his initiative decreases, and he begins to have memory difficulties specially with names and recent events. The developing inability to

remember is very likely to cause the patient to resort to confabulation. The deterioration in memory is likely to be accompanied by deterioration in critical judgment.

Since it is the most recently acquired knowledge that is lost first, a senile person may be able to carry on conversation about old events with apparent clarity, and yet not have the slightest knowledge of what season of year it is. As the condition progresses the patient is likely to become emotionally unstable and increasingly irritable. He may start laughing or crying without cause, have temper outbrusts and fits of jealously or suspicion judgment becomes increasingly poor Insomnia may become marked and rest may be disrupted by delusions and hallucinations. It is not uncommon for the patient to develop peculiarities such as hoarding of trinkets and useless objects. There may be periods of amnesia, in which the patient gets lost.

(*ii*) *Arteriosclerotic Dementia*[6] : It develops suddenly show less intellectual deterioration and less constancy in symptoms, hardening of the arteries at the radiel pulse and in the eye is observable by Funds examination.

(*iii*) *Dementia Caused by Head Injuries*[7] : Head injuries may result in brain disorders. The immediate post psychotic reactions differ in adults and children. Adults are likely to develop hallucinatory and confabulatory experiences, children become noisy, crying and restless and show uncontrolled behaviour. Head injuries are not of great importance in criminal behaviour, although a somewhat higher proportion of criminal population generally have histories of head injuries followed by unconsciousness. This is generally interpreted as indicating that the same reckless irresponsible personality characteristics that lead to their delinquency has also previously been present and had led to their high accident rate.

(*b*) *Epileptic Insanity*[8]

Epilepsy is that state of impaired brain function characterised by a recurrent disturbance in mental function, with

concomitant alterations in behaviour or thought processes.

There are three types of epilepsy of which one is of considerable criminal importance.

(*i*) *Grandmal* or major attacks are generalised convulsions of the entire body. They are usually preceded by a warning called the aura. This may consists of a peculiar sensation starting in the stomach and spreading upward, or of a tingling in the hands and feet, dizziness, hallucinations of voices, sounds, or orders etc. The aura lasts but a few seconds before unconsciousness and convulsion. During seizure the patient frequently, bites his tongue and is incontinent. The convulsion is usually followed by a period of confusion.

(*ii*) *Petitmal* or minor attacks are momentary losses of consciousness. The patient may stop in the middle of a sentence drop what he is holding, and then resume the conversation where he let off.

(*iii*) *Automatism*[9] is also a form of epilepsy and is used in connection with it. In medical usage, automatism mean that the behaviour is virtually mindless, but the legal meaning has developed far beyond that. In medical terminology the term is used only in connection with epilepsy but the lawyers describe it any abnormal state of consciousness whether confusion, delusion or dissociation that is regarded as incompatible with the existence of *mens rea* while not amounting to insanity.

Automatism[10] as a defence in recent times has become increasingly important. It is now well accepted that certain organic conditions can affect the normal functioning of the brain and lead to states of altered or clouded consciousness. Automatism exhibits it in several forms like sleepwalking or somnambulism, concussion, and epilepsy etc.; hypoglycaemia and dissociated states.

Somnambulism or Sleepwalking : It is the unconscious state known as sleepwalking.[11] Dr. Glanville William points out that "sleepwalking may in fact indicate a neurotic state

and a person who kills while sleepwalking may be as dangerous in future as one who kills in a state of clouded consciousness which occurs during the day. The present medical opinion is that sleepwalking is often associated with nocturnaly epilepsy; such a patient may be dangerous, and an insanity verdict would be proper."

Medico-legal writers regard somnambulism[12] also as a form of insanity in which the mind is subject to hallucinations and illusions, though except in very extreme cases, in which there is sudden access of insanity, the person is not likely to commit a heinous crime like murder without recovering from the delusion.

Concussion[13] : This is a temporary damage to the brain resulting from a blow, and may produce a confusional state.

Epilepsy : Already discussed.

Hypoglycaemia[14] : This condition, a deficiency of blood suger, can both impair the consciousness and induce an aggressive outburst. It may come about as the result of fasting followed by the consumption of alcohol, or when a diabetic takes an overdose of insulin or subjects himself to an unusual fatigue or lack of food. Hypoglycaemia is held to be capable of producing a state of non-insane automatism.

Dissociative States[15] : In the absence of organic brain disease, these are medically classified as hysterical neusoses. The accepted description of dissociation is given in the Glossary of Mental Disorders as follows :

"The most prominent feature is a narrowing of the field of consciousness that seems to serve an unconscious purpose, it is commonly accompanied or followed by selective amnesia. There may be dramatic but essentially superficial changes of personality sometimes taking the form of a fugue (wandering state). Behaviour may mimic psychosis or rather the patient's idea of psychosis."

2. Functional Psychoses

It is further divided into schizophrenia and depressive psychoses.

(*a*) *Schizophrenia*[16]

In any discussion of this form of insanity an immediate question arises. What is meant by the term schizophrenia ? Unfortunately there is no consensus on this point. Frequently, the diagnosis is accorded to anyone who shows serious behavioural disturbances or marked impropriety of behaviour or who expresses his thought in language and words that have no shared meaning. Misperceptions are frequently ascribed to schizophrenic, a social and even anti-social ways of life are labelled as schizophrenia. Criteria vary from country to country and from hospital to hospital. Similarly, behaviour and symptoms in schzophrenia do not remain stable or fixed.

According to Eugen Bleuler, there are three general primary symptoms of schizophrenia, a disturbance of associations of a disturbance of affect, and a disturbance of activity. One of the most characteristic features of schizophrenic is the pronounced symbolism expressed in the patients often bizarre behaviour and speech. All schizophrenic are more sensitive than the average person and are characterised by social withdrawal and a lack of capacity for establishing rapport with others. The schizophrenics have in common the bizarre thought content and odd behaviour of the patient his seeming detachment from the world of reality, the presence of delusions illusions and hallucinations. The patient also lacks awareness and understanding of his illness and is disorganised in his social relationship to others. A schizophrenic is marked by excessive correctness and symbolism and incoherence in speech.

Regarding the causes of schizophrenia among the earliest theories were the suggestions that insanity resulted from possession by the devil or evil spirits and that insanity indicated punishment by the Gods. However, the causes of schizophrenia are not known accurately.

(*i*) *Criminality of Schizophrenics*[17] : A catatonic schizophrenic is characterised by excitement turmoil and marked disorganisation of thought and behaviour and may commit serious criminal acts. They display a sweeping abandonment of conventional behaviour with the breaking through of deeply repressed crude factors. Indecent exposure, outrageous sexual proposals, brutal assaultiveness, gross destructiveness, threats, murders, etc. may be carried out with reckless abandon.

(*b*) *Depressive Psychoses*

According to Freeman,[18] depression is a persuasive feature of normal human experience. The most important insights about normal depressive affect derive from the concepts of Darwin particularly those related to adaptation.

According to Modi[19] this type of insanity is characterised by difficulty in thinking, mental depression and inhibitions of motor impulses. It affects women more than men especially in early and advanced life. It may be described under three headings : simple depression, acute depression and chronic depression.

(*i*) *Simple Depression* : This is the mildest of the three forms of the disease, and is spoken of as simple retardation. It is characterised by mental depression without hallucinations or delusions. It is associated with apprehension of evil, loss of appetite constipation and sleeplessness, especially towards early morning. The face has an anxious expression, the forehead is wrinkled and the eyes are dull. There is lack of interest in the surroundings with inability to attend the daily persuit of life. Speech is slow and in whispers, and answers are given in monosyllables with great difficulty. There is a fear that the natural affection of relatives is lost. There is also a tendency to commit suicide. The thought processes are retarded but there is no disorientation or clouding of consciousness, and memory and intellect are good.

(*ii*) *Acute Depression* : In this form the chief symptoms of melancholia are well-marked. The onset is usually

gradual, preceded by a prodromal stage lasting for one to three weaks. During this stage there are complaints of persistent headache insomnia, gastric disturbances and irritability of temper which are likely to be confused with neurasthenia or hypochondriasis.

The physical condition of acute melancholia is manifested by marked anaemia and progressive loss of weight. The appetite is lost owing to the marked deficiency in the secretion of the gastric juices, especially pepsin. The bowels are constipated owing to deficiency of intestinal juices. The pupils are frequently dilated. The pulse is rapid weak and irregular. The respirations are shallow but normal in frequency. The temperature is usually subnormal, but is slightly raised in the evenings.

The mental symptoms generally appear along with the physical symptoms. Perceptions normal, orientation is usually quite correct and the memory and intellectual faculties are well preserved but volitional attention is generally poor and defective. There is paralysis of emotional reaction. Good or bad news or even a joke does not affect the patient who feels gloomy and miserable, and experiences psychic pain. He has lost the social instinct, and refuses to mix with his neighbours, or to take part in outdoor games or social activities. Hallucinal tions and delusions are usually present. Hallucinations are often of an auditory type, in which the patient imagines that he hears voices accusing him of various misdeeds or threatening him of punishment. Delusions are generally of a hypochondriacanature. The patient believes that he suffers from some incurable disease, e.g., closure of the oesophagus, gangrene of the intestines or wasting of the brain and that he will die a miserable death. Delusions may also be of the religious or persecuting character.

Suicidal tendencies are common, though the patient may develop homicidal tendency, and may kill his wife and children to save them from the supposed utter ruin, or may kill some person whom he believes to be giving him and his family all the imaginable trouble of the world.

Such a patient often resists being fed, depressed or washed. He is unmindful of personal cleanliness, and passes urine and faeces in his garments. On the other occasions the patient passes as it were, into a stuporous condition. He is pathetic, and sits silent and motionless in the same fixed attitude for a long time.

Acute depression may alternate with an attack of mania with a lucid interval intervening between the two. This alternating form of the disease is known as circular insanity or folic circulaire.

An attack of acute depression on an average lasts from six to eight months and ends in recovery. If the attack is not followed by recovery within a year it usually passes into a chronic condition. Death may occur in the acute stage, when the patient passes into a typhoid state.

(*iii*) *Chronic Depression* : This form results from the acute form, and is characterised by some improvement in the physical signs but not in the mental symptoms. The patient becomes fat and increases in weight. His digestive powers also improve, and the bowels open regularly. The patient, however, remains persistently depressed and suffers from hallucinations and delusions.

(*iv*) *Criminality*[20] *of Depressive Psychosis* : Depressive psychosis does not often produce criminal acts, although it may. In severe depression, the patients concluding that suicide the only way out may also conclude that it would be an act of mercy to kill his family at the same time. Infanticide may occur in puerperal depressions following childbirth. The exuberante enterprise and the optimism of the maniac may lead him to sink large sums of money into rash business ventures and promotion schemes and also to contract loans or use trust funds which may lead to charges of fraud or embezzlement. The maniac's gay abandon may also lead to intemperance and dissipation. He may also plunge into a season of uninhibited play boy carousing, brawling and philandering which may end in criminal charges as well as in the destruction of his home

his carrier and his reputation.

(C) CONGENITAL INTELLECTUAL DISORDERS OR AMENTIA

There is no universally accepted term to signate those who from birth show evidence of inferior intellectual capacity. According to Modi[21] mental defect or amentia is called dementia naturalis by lawyers and is defined as follows :

"Mental defectiveness is legally defined in England as condition of arrested or incomplete development of mind existing before the age of 18 years, whether arising from inherent causes or induced by disease or injury."

Lawyers and judges should strive for a realistic understanding of intellectual deficiency especially in determining whether a deficient person had sufficient capacity to know the wrongfulness of his act. It is necessary to take account of the nature of the act.

Intellectual disorders may arise from hereditary causes, intrauterine disorders of development or early childhood injuries to the nervous system by infection or trauma. Where there is a family history of deficiency it is to be presumed that it is hereditary.

1. Forms of Congenital Intellectual Disorders

This type of disorder may be described under the heads, Mongolism, cretinism, idiocy, imbecility, feeble mindedness etc.

(a) *Mongolism Cretinism*

Mongolism is an extreme form of intellectual deficiency, so named, because one of its physical sign is the slanting eyes of the oriental. It is an intrauterine developmental defect. There are different view regarding the causes of Mongolism. According to one view the Mongols are born to exhausted

mothers, i.e., mothers above forty or mothers of numerous prior children. The modern view is that Mongolism is result of the injury or shock to the foetus at about the eighth weak of pregnancy. Mongols are not involved in conflicts with law.

Cretinism is a form of intellectual deficiency resulting from a congenital under function or dysfunction of thyroid gland.

(*b*) *Idiocy*

This is a congenital condition due to the defective development of the mental faculties. An idiot is wanting in memory and will power, is devoid of emotions, has no initiative of any kind, is unable to fix attention on any subject and is unable to guard himself against common physical dangers. He is usually quiet, gentle and timid, though he can be easily irritated. He can't express himself by articulate language, but he may be able to make himself understood by certain signs, cries or sounds. In some cases he is unable to recognise his relatives and learn with great difficulty. He is usually filthy in his habits and has no concern as to what he eats or drinks. He is often depraved in his morals and is sometimes cruel to weaker children as well as animals.

(*c*) *Imbecility*

This is a minor form of idiocy and may or may not be congenital. Imbeciles are incapable of managing themselves or their affairs or in the case of children, of being taught to do so. They are able to speak, though their command of language is very poor. Their memory is generally feeble though in some cases, it is highly developed but intellect is quite weak. They can mechanically repeat without any mistake what is taught to them, but can't understand its meaning. They are easily roused to passion and may consequently become dangerous. They may commit theft or even murder owing to their repulsive manners and habits, it is not possible to associate with them, but with a little patience and preserverance they can be taught to dress decently, to eat properly and to control their animal instincts.

(*d*) *Feeble Mindedness*

Under the Mental Deficiency (England) Act, 1913, feeble minded persons or morons are defined as persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision and control for their own protection, or for the protection of others, or in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from instruction in ordinary schools. Feeble animinded individuals do not, as a rule present bodily deformities and stigmata of degeneration, and are often capable of making their own living. Such persons, however, develop vicious or criminal propensities, especially of a sexual nature and are apt to commit assaults or even murder, as they are incapable of restraining their impulses.

(2) Criminality of Congenitally Mentally Deficient Persons

About thirty years ago, it was believed that low grade intelligence was a major source of crime. Today however, criminologists think otherwise. There seemed to be no significant difference between the intelligence of criminal and non-criminal population. On the whole, the intellectually defective have a low energy level and are not aggressively anti-social. Where they are led into crime, it is likely to be because they are poorly equipped to make way in a complex and sophisticated urban society. They do not for consequences and are easily led larceny is one of their most common crimes. Others are impulsive assaults arson and vagrancy.

(D) PSYCHOPATHIC PERSONALITY[22]

The term "psychopath" is a vague one and it is not easy to define it. Roughly, it is used to refer to groups of mentally abnormal individuals who do not fit into the categories of neuroses, psychosis or intellectual deficiency. They do not usually exhibit pronounced mood disturbances, they do not have delusions or hallucinations, they are not intellectually

retarded. Yet they are in constant difficulties because of abnormal, frequently anti-social behaviour. Anomalies in their character, emotions, moral sense or sexual make-up render them incapable of conforming to social standards or of making satisfactory social adjustment.

1. Characteristics of the Psychopaths

Characteristics of the psychopaths may be summarised under three heads :

(a) Acting, (b) Feeling, (c) Thinking.

(*a*) *Acting*

In their action, the psychopaths are characterised by inability to withstand tedium, frequent change, lack of sense of responsibility, taking the fun where it is found, blow up under pressure, maladjustment to law and order and recidivism.

(*b*) *In Feeling*

They show emotional deficiency, narcissim, callousness inconsideration, no remorse and projects blame on others, hair trigger emotions, exaggerated display and are irritable and impulsive, worry but do nothing about it.

(*c*) *In Thinking*

They are characterised by defective judgment, live for the present rather than for future and show inability to profit from experience, able to realise the consequences intellectually but not to evaluate them.

Regarding the causes of psychopathic personality it may be said the person who becomes psychopath must have been subjected to certain noxious influences like virtual emotional starvation during the first years of life. Cruelty of parents is also a causative factor for psychopathic personality.

(2) Criminality

The anti-social behaviour of the psychopathic person is primarily harmful to the actor himself. However, psychopathic personality is an important factor in various crimes in which the psychopath 'acts out' his aggressive reaction against society. Yet the traditional tests of insanity are not broad enough to include such disorders. Many confidence men fall in this category and so do many swindlers who never get into criminal courts because they confine their operations to relatives and friends who prefer not to prosecute. Many alcohalics, drug, addicts, vagabonds, pathological liars and various kinds of inadequate personalities belong to the psychopath group. Most of the psychopathic personalities belong in that large and challenging group of persons who are not insane within the meaning of the criminal tests of responsibility but who are certainly not normal.

E. INSANITY CAUSED BY INTOXICANTS

A state of acute intoxication[23] may lead to insanity. Insanity arising from intoxication if so pronounced is treated on the same footing as any other cause. Two types of cases exhibiting insanity as a result of intoxication have generally been observed. These are : (1) those resulting from abuse of alcohol, (2) and other arising from consumption of any other intoxicant like ganja, charas, hashish etc.

(1) Insanity Causes by Alcohol or Inabriety

According to Tailor[24] alcohol produces a temporary alteration in the mental state, by a progressive interference with mental function. The functions of the brain that are affected by alcohol are the exercise of judgment, self-consciousness, capacity for self-criticism and restraint. More severe degrees of intoxication produce progressively increasing changes in mental and nervous function culminating in complete loss of control with ultimately absolute unconsciousness which may deepen into coma and death. *Delirium tremens* is by far the most common form of acute insanity seen in

association with alcoholism. The condition frequently follows either a spontaneous inability to continue to take alcohol, from failure or withdrawal of supply, or increasing nausea and vomiting, or some physical or emotional stress or both. Patients with delerium tremens are often violent and nearly always restless impulsively overactive, confused and unsteady on their feet. They are not responsible for their criminal acts committed while they are labouring under an attack. The essential difference between delirium tremens and voluntary drunkenness in this respect is that the former is regarded as the disorder of mind but the latter is not. Delirium tremens[25] is not to be considered as a simple alcoholic intoxication, a sort of belated drunkenness caused by accumulation of the poison in the organism. Its clinical aspect in fact differs radically from acute intoxication.

The reasons for regarding delirium tremens as insanity rather than as mere drunkenness are three-fold according to Wharton.[26]

That delirium tremens is not the intended result of drinking in the same way that drunkenness is :

that there is no possibility that delirium tremens will be voluntarily generated in order to afford a cloak for a particular crime.

that so far as original cause is concerned, delirium tremens is not peculiar in being the offspring of indiscretion or guilt, for such is the case with many other kinds of insanity.

(2) Insanity Caused by Intoxicants other than Alcohol

Such type of intoxicants include, ganja, heroin, barbiturates, hallucinogens like LSD, amphatamines etc.

Alcohol is generally[27] distinguished from drugs a matter of speech, though scientifically speaking it is also a drug. Most of the cases concern alcohol but other toxic drugs

have come to present similar legal problems which are answered on the same principles as those established for alcohol. Cocaine which is frequently injected with heroin, is an intense stimulant which in larger doses causes, acute paronia. Amphatamines and barbiturates do not generally produce criminal behaviour. However, large overdoses can issue in violence, apparently, as the result of producing a psychosis. In the vast controversy surrounding cannabis (marihavane, hashish, pot) the evidence of any connection with criminality is almost entirely negative. Only occasionally it seems to precipitate a psychotic state. The hallucinogens, including LSD, produce hallucinations—as their name implies, under their influence repressions and learned patterns of behaviour are dissolved away. But again the connection with criminal behaviour is very slight.

The principle of liability governing insanity caused by intoxicants is same as that of alcohol. While voluntary intoxication is no defence intoxication otherwise caused by any other thing will only be a defence when actual insanity supervenes, i.e., when delirium tremens occurs.

F. MENTAL DELUSIONS

To the layman hallucinatory experiences,[28] and delusional beliefs are the very essence of insanity. Delusions are generally defined as being incorrigible false beliefs. They are unshaken by rational arguments and are inappropriate to social and cultural context of the individual who holds them. They are usually associated with his personality and consists of a belief in some beneficial or prejudicial influence. Delusions may be of grandeur or exaltation, of persecution, of depression, of jealousy, of infidelity etc. In such cases there is a mistake of fact, as there person kills another but thinks that he was breaking a jal or thinks that by doing so he is sending the person slain to heaven. The whole experience is attended by marked emotional tension which adds to the conviction of the reality of the belief.

G. HOMICIDAL MANIA

Homicidal mania or monomania is commonly defined as a state of partial insanity, accompanied by an impulse to perpetuate murder because of which it is also sometimes called impulsive or paroxymal mania. The main feature of the disorder is the existence of a destructive impulse which leads a person to destroy those to whom he is most intimately attached. It sometimes attacks a man all of a sudden, sometimes it is felt for a long time but is concealed and restrained and there may be signs of depression and melancholy, low spirits and loss of appetite as well as eccentric or wayward habits. According to Taylor, cases are sometimes rendered difficult by reason of any disorder of the mind, so that the chief evidence of the disorder is the act itself.

A person cannot, as a general rule, be immune from criminal liability merely on the ground that he had the promptings of an involuntary impulse. Yet, there are cases of homicidal maniacs whose intellect is so impaired as to bring their case within the exception. Such case may be divided, according to Sir Hari Singh Gour[29] into three classes :

(i) Where the propensity to kill has some absurd irrational motive.

(ii) Where it has no discoverable motive.

(iii) Where it is committed without interest, without motive and often on a person loved by the perpetrator.

No doubt, this classification takes no note of crimes committed from a motive but in such cases, there is premeditation and cognition. In such cases therefore, there is no room for the criminality of the perpetrator.

Judicial Application of Some Forms of Insanity

In the above discussion, a detailed account of different forms of mental disorders was given. This classification

though not exhaustive gives in nutshell, an overall account of almost the most common types of insanities recognised in medical science. But the cases that most frequently come before the court are those of inabriety, ganja smoking, of mental delusion, schizophrenia, epilepsy, somnambulism puerperal insanity and homicidal mania. Let us, therefore discuss the cases exhibiting one or the other form of insanity and see, how far these mental disorders come to the rescue of the accused.

A. *Inabriety*

Inabriety is insanity produced by alcohol. The rule regarding drunkenness in England[30] is that that were drunkenness can't be pleaded as an excuse for crime, but a state of mental unsoundness produced by alcohol can be so pleaded, and if established by proof would be held to be so. In these cases three rules were laid down by House of Lords which have been consistently followed in India. These rules may be stated as follows :

(i) First, merely to establish that a man's mind was so affected by drink, that he more readily gave way to some violent passion forms no excuse.

(ii) Secondly, if actual insanity, in fact, supervenes as the result of alcoholic excess, it furnishes a complete answer to a criminal charge as insanity induced by any other cause—insanity even though temporary is an answer.

(iii) Thirdly, in cases of more intoxication the test for exemption is more stringent than in cases of insanity : a judge should not ask the jury the question, whether the prisoner knew that he was doing wrong in a defence of drunkenness, where insanity is not pleaded.

These rules have consistently been followed in a number of cases in India. Thus, in *Emperor* v. *Bhaleka Aham*,[31] the court

observed :

"Under Section 84 unsoundness of mind producing in capacity to know the nature of the act committed or that it is wrong or contrary to law is a defence to a criminal charge, but by Section 85 such incapacity is no defence, if produced by voluntary drunkenness. If however, voluntary drunkenness causes a disease which produces such incapacity, then Section 84 applies though the disease may be of temporary nature."

The lower Burma Chief Court, however, did not find such disease as above in an apparently similar fact situation. In this case,[32] the accused after drinking liquor walked two miles in the sun to a village, where he was hit on the head by another person. He persued that person to a certain house but not finding him there he attacked and wounded with a dao five women who were in the house. The civil surgeon thought that the accused was not fully responsible for his action "owing to the mental state cause by the wound on his head and the alcohol he had taken and the walk that he had taken in the sun." The court, however, regarded these facts insufficient for the application of Section 84 of the I.P.C.

The Allahabad and Saurashtra High Courts have in the cases of *Prabhunath* v. *State*[33] and *Ranjit Singh Ram Singh* v. *State*,[34] have also held that there is a distinction between the defence of insanity in the true sense caused by excessive drunkenness and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming specific intention. Actual insanity supervening as a result of alcoholic excess furnishes complete answar to a criminal charge as insanity induced by any other cause. But in cases falling short of insanity evidence of drunkenness merely establishing that the mind of the accused was so affected by drink that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

(B) *Ganja Smoking*

The general rule propounded in *Emperor* v. *Harka*[35] that if

a person was of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arose from disease of the brain or from persistent indulgence in intoxicating drugs or liquor has been treated as "unduly strained in favour of the prisoner" in the case of *Vithoo* v. *Emperor*[36] where the accused charged for the killing of his wife, took the plea of insanity owing to excessive ganja smoking. In this case the court examined the conclusions of the Ganja Commission and of other authorities as set out in Taylor's Principle and Practice of Medical Jurisprudence and disfavoured the rule laid down in the Harka case observing :

"In applying the law, there are difficulties arising from the effects of ganja smoking which do not often arise in cases of drunkenness from alcohol. For the effects of ganja stimulate the symptoms of insanity in a way which the effects of alcohol usually do not. There may be hallucinations—sometimes accompanied by strong emotional excitement and even violent delirium. This extremely temporary form of insanity must be clearly distinguished from the unsoundness of mind, even temporary unsoundness of mind, coming within the perview of Section 84 I.P.C. and must be dealt with rather according to the provisions of law contained in the Sections 85 and 86."

The court, therefore, held that temporary insanity caused by one bout of ganja smoking, which is of such an extremely temporary nature, as to pass off a few hours after the consumption of ganja. is not even temporary unsoundness of mind, but is nothing more or less than intoxication, and affords no excuse to the prisoner unless the intoxication be involuntary.

Another case which dealt with the defence of insanity allegedly arising from the use of ganja is that of *Queen Empress* v. *Sakharam Valad Ramji*.[37] In this case the confirmed habit of smoking ganja made the accused unwilling or unable to work. It brought him poverty and misery, it induced a state of mental irritability which rendered him unable to resist the temptation to resent with brutal violence the slightest disrespect or opposition to his wishes. These facts did not

indicate that the proved habit of smoking and drinking ganja had so weakened the mind of the accused such as would absolve him in circumstances under which the existence of delirium tremens induced by a habit of taking intoxicants may, absolve the killer of another from responsibility to the criminal law.

The case of *Public Prosecutor* v. *Devasikamni*[38] also deals with a case of insanity arising from smoking ganja. The accused took a torch from the kitchen, ran to the building, put into the thatch and then threw it on the roof of the kitchen and ran away. The thatch caught fire and the school building was completely destroyed. The accused pleaded insanity on the ground of his being a smoker of ganja. It was proved that he used to threaten his father and children and used to beat his wife and run away in forest and used to throw away his food. The court held that the facts were not strong enough to give him exemption from the liability of his conduct under Section 84 and the fact that he ran away after putting the torch to the thatch showed that at the time he committed the offence he was conscious that what he was doing was wrongful.

Thus, from these cases it becomes clear that consumption of ganja does not produce insanity within the meaning of Section 84 and hence an accused will not be protected if he commits an offence while under the influence of ganja.

C. Mental Delusions

As the definition of mental delusions has already been given, there is no need to discuss it here. We are concerned only with the cases in which it has been treated as a type of insanity. Let us now discuss the cases exhibiting various types of delusions.

(*a*) *Delusions of Infidelity* : A society with many sex taboos like India puts great emphasis on the fidelity of a woman. This is perhaps the reason that in India cases involving delusions of fidelity are many.

In *Muhammad Hussain* v. *Emperor*,[39] the accused killed his wife on the ground that he had found her with his father in an illicit liaison. There was evidence that for three or three and a half years prior to the occurrence the accused had suffered at intervals from fits and mental unsoundness in the course of which he was subject to delusions. The court regarded the accused's allegation as obviously untrue as the father was seventy years old and the wife was eight months advanced in pregnancy. The court held that he had killed her under the influence of a delusion which had produced in his mind, a *bona fide* belief that the woman had been guilty of abominable conduct but this delusion did not prevent him from knowing the nature of the act. The court, therefore, rightly convicted him.

The case of *Ghatu Pramanik* v. *Emperor*[40] also relates to the delusion of infidility. In this case the accused stated in his confession that he had seen the deceased arrange a clandestine meeting between his wife and a young man, whom he actually saw enter his wife's room sometime before midnight and again leave it after a considerable interval, whereupon he was smitten with such shame that he could not have a wink of sleep and was devoid of his senses at the time he killed the deceased. It was held that there was no doubt that the accused did actually believe he had ocular proof of his wife's infidility and that if he had acted under the immediate influence of such a delusion, his guilt would have been greatly reduced, but as he did not do so, his offence was murder under Section 302, nor was there any ground for the application of section 84.

Similarly, in the case of *Hazara Singh* v. *The State*[41] the Punjab High Court also dealt with a situation involving delusion of infidelity. The frequent visits of the deceased to her brother-in-law created in the accused's mind an indelible impression that his wife had contracted adultrous intimacy with the later. Under this strong delusion of unfaithfulness of his wife, he had been in the habit of mercilessly beating and maltreating her. The brooding over the character of his wife assumed the form of a kind of temporary insanity.

Deeply disturbed by the thoughts of the unchastity of his wife, during the night of occurrence the accused caused her death by throwing nitric acid. The medical evidence showed that he was capable of knowing what he was doing and had ordinary concept of right and wrong. The accused was, therefore, held guilty of murder but the court thought fit to reduce the death sentence to imprisonment for life.

(*b*) *Delusions of Jealousy* : In *Dil Gazi* v. *Emperor*,[42] the accused who harboured a delusion that his wife would either elope or be taken away by some armed men, cut her throat without any rational motive. He made no attempt to escape or offer resistance or to conceal his act. The evidence showed that before the commission of the offence he suffered from failure of reasoning powers, besides his delusion as to dangers which threatened his wife. His climbing a tree in search of his pillows indicated a state of mind resembling that generally described as idiocy. The court regarded these facts as proving unsoundness of mind which prevented the accused from knowing the nature of his act, and that it was wrong or contrary to law.

(*c*) *Delusions Owing to Religious Beliefs and Superstitions* : Cases of human sacrifice and of murder of supposed witches offer such examples.

In *Queen* v. *Bishendharu Kahar*,[43] the accused sacrificed his son to the God Mahadeo in persuance of a vow that if the son was born he would sacrifice it to Ganges water and do pooja, because wealth had not accompanied the son's birth and afterwards cut his own throat as a protest against his deity's injustice. He believed that his son would come back to life in three days. He was otherwise perfectly sane and repudiated all suggestions as to his insanity. He was held guilty of murder though his act was prompted to some extent by his religious enthusiasm.

In *re Narayanaswamy Goundan*,[44] a priest of temple on being asked to sing praises for the cure of a small pox ridden patient sacrificed a five months old infant and caused its death

as a sacrifice to the Goddess. His defence was that he was not in his senses but inspired. It was found that the appellant had not in a state of paroxysm religious or otherwise on the spot and instantaneously, committed the murder and where there was evidence that before and after the offence the appellant was perfectly sane and normal person, it was held that these were not enough to show that the appellant was insane, at the time of the act, within the meaning of Section 84.

In another case, *Geron Ali* v. *Emperor*,[45] the accused on asked by a Pir to sacrifice human head as it would send him to heaven cut off heads of two persons including that of his own daughter and offered the same to the Pir saying, "Father you asked me for one human head, I present you with two." Evidence showed that he considered that he was doing a meritorious act which qualified him for heaven. His conduct prior to and subsequent to the act showed that his mind was disordered. The court held that the accused did not know that what he was doing was wrong or contrary to law and thus, he was entitled to the protection of Section 84.

In *Karma Urang* v. *Emperor*,[46] the accused killed his father. He said that he had a dream in which Goddess Kali told him that either he would have to kill his father or his father would kill him, and that his father was a descendant of the Goddess Kali. The civil surgeon who examined the accused opined that the accused had a definite delusion which passed off after a couple of months and that he could not distinguish right from wrong. Acquitting the accused the court observed.

"It is no doubt plain enough that under the doctrine in M'Naghten's case there may be cases where the correct application of law is to hold a man amenable for his action, assuming merely that his particular delusion is true, but the provision which governs the present case in the first instance is that contained in Section 84 of the I.P.C. We are to see whether this man is shown to have had no knowledge of the nature and quality of his act or as the statute says, incapable

of knowing the nature of the act or that he is doing what is either wrong or contrary to law."

In the case of *Mt. Sukni Shamain* v. *Emperor*,[47] the accused killed her husband and later on confessed that she was posined by evil spirits who asked her to kill her husband or it would kill her. The court held that it can't be said to be a case of unsoundness of mind rendering accused incapable of knowing the nature of the act or that what she was doing was wrong or contrary to law.

In a recent case of *Nivrutti* v. *State* of *Maharashtra*,[48] the accused told his wife that he had a dream that their two month old son Madhu was devil and that if it would not die both of them would have to die and, therefore, he should be killed. He, therefore, kept on repeating that his child was a devil and had to be killed in spite of the resistance on the part of his mother and wife. He caught hold of his son and thrashed him on the pounding stone thrice as a result of which he died.

The court held that at the crucial moment, he was suffering from legal insanity, therefore, his conviction under Section 302 was set aside and he was acquitted.

(*d*) *Delusions of Persecution* : In *re Sankappa Shetty*,[49] a loving husband who had never been known to have beaten or ill-treated his wife on any previous occasion suddenly killed her in a closed room, which was bolted from inside by battering her body brutally and violently with a setting plank and inflicting as many as twenty wounds and bruises. There was complete lack of motive on the part of the accused who shown to have been strange and eccentric during about these days prior to the occurrence. He was labouring under a delusion that some relation of his had given him drugs and that Krutrim (witch craft) had been practised upon him. After the room was broken open by five persons the accused made no attempt to escape but appeared dazed. The court held that in the circumstances of the case, the plea of insanity was not established and the accused was guilty of murder.

Similarly in *Kashiram* v. *The State*,[50] the accused was labouring under the influence of an insane delusion that his wife had done him an injury and was responsible for depriving him of his liberty. The previous insanity of the accused and this persistent delusion of his wife having done him some wrong established conclusively that the accused who was in other aspects completely and utterly insane and who had glimmering knowledge" of the native and consequence of his act in striking his wife with an axe was absolutely incapable of realising that it was wrong or contrary to law.

(D) Schizophrenia

In *Balu Ganpat* v. *State of Maharashtra*,[51] the accused killed his wife and son and was convicted for murder under Section 302 I.P.C. The accused admitted murder but pleaded insanity and claimed protection of Section 84. Soon after the incident the accused was taken to Bombay for medical consultation and treatment relating to his mental condition. The medical evidence disclosed that the accused was suffering from schizophrenia. As a result the court acquitted the accused of the charge as he was held insane within the meaning of Section 84.

In *Prakash* v. *State of Maharashtra*,[52] the accused stood charged and eventually was found guilty of having committed the murder of one Balu Shinaba Naik. The accused took the plea of insanity. The question that arose in the present case was as to whether on the day of the incident and during the course of event that resulted in homicidal death of the deceased, the accused was affected by any mental disorder and by reason of that was not knowing the nature of the incident. It was satisfactorily shown that prior to the day of the incident the accused was not keeping good mental health. He was subjected to fits of hallucinations as well as fits of violence. The circumstances spoken to be by the witnesses showed that the act was motiveless, his behaviour totally, irrational and further there was evidence that he was having sounds when there were no actual sounds at all. After his arrest, the accused was admitted to the mental hospital and

treated for about 5 months. The diagnosis then, as was spoken to by the doctor was schizophrenia. It is well known that a schizophrenic can commit acts of violence and the schizophrenic fits may last for a few minutes or few hours. In the circumstances the accused was entitled to rely on Section 84.

In *Kuttappan* v. *State of Kerala*,[53] the accused killed his wife by chopping of her head and then took her head in his hand and walked along a road. The accused raised the plea of insanity. The court held that where in prosecution of the accused for murder of his wife, from the doctor's evidence it could be said that the accused was suffering from mental, illness which developed into paranoid psychosis and later into paranoid schizophrenia which if not properly treated would persist and even aggravate, in background of this medical evidence and from the facts that the accused had disappeared from the village for about 2 years and had returned only two months prior to the occurrence it could be said that at the time of the occurrence the accused was a person of unsound mine and was incapable of knowing the nature of his act. He was, therefore, entitled to acquittal by virtue of Section 84 I.P.C.

(*E*) *Epileptic Insanity*

In a large number of cases, epileptic fits do not lead to insanity. But when they become very frequent they may lead to insanity. To exonerate the epileptic it is necessary to show that he was suffering from an epileptic seizure at the time when he committed the offence.

In state of *Madhya Pradesh* v. *Ahmadulla*,[54] the Supreme Court negatived the accused's contention that he was suffering from epileptic seizure at the time when he committed the murder because of the following reasons :

(a) The accused bore ill will towards the deceased.

(b) The act was committed at dead of night when the accused would not be seen committing the act.

(c) The accused had carefully planned the act taking a torch with him and obtaining access to the house by stealthily scaling over a wall.

(d) After the act of killing, the accused was found in a mood of exaltation.

In a Rangoon case, *Nagh Ant Bwe* v. *Emperor*,[55] the accused murdered his mother and wounded his step father in a fit of epilepsy without any apparent cause and without any enmity with them. The accused then led himself in a revine. The medical evidence revealed that the accused was subject to epileptic fits and he used to be completely unconscious during such fits. It was held that the evidence of this unprovoked attack upon his mother and step father with whom he had no quarrel or trouble, and his subsequent hiding in ravine, were consistent with the attack on the deceased having taken place during or whilst recovering from an epileptic fit for consequences of which he could not be held criminally liable.

In *V. Kannan* v. *State*,[56] the accused was subject to periodic epileptic fits from his childhood and symptoms of an impending epileptic seizure were seen on the day he killed his aged mother. The evidence showed that three weapons, namely, a bill book, a wooden reaper and a stick of firewood were used in the attack, that the assault continued for some time, that the accused's reply to the deceased's plea not to kill his old mother was that she deserved something more than mere killing and that the accused made no attempt whatsoever either to conceal his crime or to escape from the scene. It was suggested that the accused's occasional wranglas with his mother over the quality of food which she served him constituted motive for the crime. However, the court thought it puerile to hold that an occasional quarrel over the quality of meals would motivate a mature man to hack to death his old and defenceless mother. The complete absence of motive or provocation, the nature and multiplicity of the weapons used, the duration of attack, the maniacal fury with which the attack was delivered and his subsequent conduct were all indications that the accused was acting under some insane impulse, and

therefore, his act was saved by Section 84.

In *Satwant Singh* v. *State of Punjab*,[57] the accused was a patient of epilepsy. He was serving in army and had attacks of epilepsy, but for which he took medical treatment but of no avail. On the day of incident the accused killed the deceased with a Kassi. At the trial, the accused took the plea that he was suffering from epilepsy and as such was of an unsound mind when he attacked and caused fatal injuries to the deceased with Kassi.

The court held that the past history of the appellant disclosing that he had been suffering from major epilepsy, the conduct of the appellant immediately after the occurrence had taken place, as observed by the three prosecution witnesses mentioned about his mental defect in the F.I.R. All these facts and circumstances taken together would go to show that in fact, the appellant was under the fit of epilepsy when he had attacked the deceased and then being of unsound mind, did not know the nature of the acts committed by him or that he was doing something which was either wrong or contrary to law. Hence, the accused was entitled to the protection of Section 84. In another case, *Budha Datta Umarane* v. *The State of Maharashtra*,[58] there was a trivial quarrel between brothers on the issue of cultivation of the field, the brothers did not take their meals, the accused in a huff went out to sleep with his cousin but came in the morning in normal condition. He brought an axe with him and gave a normal answer to his father that he wanted to go out in the woods; till that stage the father did not notice even a scintilla of abnormal behaviour. The accused, sharpened the axe on the grinding wheel and delivered a forcible blow on the helpless and defenceless brother who was sleeping with a blanket over his head. So forceful was the delivery and so accurate was the blow on the skull that made its way into the folds of a blanket and guilt and resulted in 4″ deep incision. The accused took the plea of epilepsy but the court held that though in certain given conditions a patient of grand Mal Epilepsy may be thrown in a fit of automatism but it would be an affront to common sense to suggest that a person like

the accused was so seized when the victim who was sleeping peacefully had made no attempt to come near the accused which action might have triggered off a reaction in the patient. Accordingly the accused was not protected by Section 84 and appeal was dismissed.

(*f*) *Homicidal Mania*

As already discussed the people showing homicidal maniacs fall into three categories :

(i) where the desire to kill has some absurd irrational motive,

(ii) where it has no discoverable motive,

(iii) where it is committed without interest, without motive, and often on a person loved by the perpetrator.

The case of *Shibo Keori* v. *Emperor*,[59] can be cited as case coming in the first category. The prisoner, who was charged with committing murder, was a young man of weak intellect, and the motive actuating the offence was trivial and inadequate. As soon as he had killed his uncle by lacking him on the head and neck with a sword, he rushed about brandishing his weapon and shouting "Victory to Kali". He attempted to strike other persons including his own father. When the paroxysom had passed off, during the police inquiry, he appeared to be rational, but immediately afterwards, he developed aphasia, attempted to commit suicide and was undoubtedly insane from that time for a period of five years. The accused was suffering from a fit of melancholic homicidal mania at the time he lacked the deceased and was by reason of unsoundness of mind, incapable of knowing that he was doing an act which was wrong or contrary to law, and therefore, he was not guilty of murder.

Similarly, the case of *Subbigadur* v. *Emperor*,[60] gives us an illustration of homicidal maniacs falling in the second category. The accused asked one Voddi. Nadduleti and his wife to give him some water and after it was given he behaved in an extra-

ordinary manner muttering that some people had spoilt him. In the same afternoon the accused murdered Nadduleti and his wife when they were returning home. There was also absence of motive. The accused was held, in the circumstances of the case, as suffering from homicidal mania at the time he did the act and was therefore excused.

Notes and References

1. Gaur's Penal Law of India, 10th Ed., pp. 635-37.
2. The Psycho-analytical Theory of Neurosis (1945), p. 117.
3. Freedman, Kaplan and Sadock, Modern Synopsis of Comprehensive Text book of Psychiatry (1964), p. 402.
4. Gaur's Penal Law of India; *supra*, note 1, p. 638.
5. Modi's Text-Book of Medical Jurisprudence and Toxicology, 16th Edition, 1967, p. 391.
6. See *supra* note 1, p. 645.
7. *Ibid.*, p. 646.
8. See *supra*, note 3.
9. Glanville Williams, A Text-Book of Criminal Law (1978), p. 609.
10. R.D. Mackay, Non-Organic Automatism Some : Recent Developments, Criminal Law Review, June 1980, p. 350.
11. Modi's Medical Jurisprudence and Toxicology, 12 ed. p. 399.
12. See *supra*, note 1, p. 685.
13. Glanville Williams, *supra*, note 9, p. 609.
14. *Ibid.*, p. 611.
15. *Ibid.*, p. 612.
16. See *supra*, note 3.
17. See *supra*, note 1, p. 635.
18. See *supra*, note 16.
19. Modi, *supra*, note 5; pp. 394-96.
20. H.S. Gaur, *supra*, note 1, p. 635.
21. Modi, *supra*, note 5, p. 388.
22. See *supra*, note 1, p. 639.
23. K.M. Sharma, Defence of Insanity in Indian Criminal Law, JILI, 1965, p. 353.
24. Taylor's Principle and Practice of Medical Jurisprudence, Vol. I, (12th Ed., p. 494).
25. Rosonhoff, Manual of Psychiatry (16th Ed., 1927), p. 225.
26. Wharton, Criminal Law (12 Ed., 1932), Sec. 65.
27. Glanville Williams, *supra*, note 9 p. 416.
28. K.M. Sharma, *supra*. note 23, p. 356.
29. Gour's Penal Law of India, p. 680, 10th Ed.
30. D.P.P. *v.* Beard (1920) A.C. 479.
31. (1902) I.L.R. 29 Cal. 493.

32. Mau Ngh Gyi *v.* Emperor, (1913) 14 Cr. L.J. 427.
33. AIR 1957 All. 667.
34. AIR 1955 N.O.C. 533.
35. (1906) 4 CRI. L.J. 88, 89 (All.).
36. (1912) 13 CRI. L.J. 1164 (Nag.).
37. (1890) I.L.R. 14 Bomb. 564.
38. AIR 1928 Mad. 196.
39. (1913) 14 CRI. L.J. 81.
40. (1901) I.L.R. 18 Cal. 613.
41. AIR 1958 Punjab 104.
42. (1907) 6 Cr. L.J. 233 (Calcutta), see also Nga Pyan *v.* Emperor (1912) 13 Cr. L.J. 49.
43. (1867) 7 W.R. 64.
44. (1931) M.W.N. 719.
45. AIR 1941 Cal. 129.
46. AIR 1928 Cal. 238.
47. AIR 1936 Pat. 245.
48. 1985 CRI. L.J. Pat. 245
49. AIR 1941 Mad. 326.
50. AIR 1957, M.B. 104.
51. 1983 CRI. L.J. 1769.
52. 1985 CRI. L.J. 196.
53. 1986 CRI. L.J. 271.
54. AIR 1961 SC 998.
55. AIR 1937 Rang. 99, 100.
56. AIR 1960 Kar. 24.
57. 1975 CRI. L.J. 1605.
58. 1985 CRI. L.J. 844.
59. (1906) 3 CRI. L.J., p. 60 (Calcutta).
60. AIR 1925 Mad. 1238.

5

EVIDENTIAL PARAMETERS OF INSANITY

When an offence is committed by an insane person and is convicted by the court for the same, and he claims the benefit of Section 84, it is for him to prove his insanity. In other words, he bears the burden to prove that his case is covered by Section 84. However, it is for the court to decide whether he has discharged the burden or not. In this chapter a brief discussion of question relating to burden of proof in cases of insanity, tools which are employed in proving insanity, and the residual parameters of insanity has been undertaken.

A. BURDEN OF PROOF

According to Batuklal,[1] the strict meaning of the term burden of proof is that if no evidence is given by the party on whom the burden is passed, the issue must be found against him. In a case[2] the expression burden of proof has been interpreted to mean two different things. It means (1) some times that the party is required to prove an allegation before judgment is given in its favour, and secondly, (2) it also means that on a contested issue one of the two contending parties has to introduce evidence. However, Section 101 of the Indian Evidence Act defines burden of proof as follows :

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist."

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Thus, A desires a court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(1) On Whom Burden of Proof Lies

According to Section 102 of Indian Evidence Act burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. In criminal cases the burden of proof in the sense of establishing a case lies on the prosecution.

But in cases of insanity, burden of proving that his case is covered by Section 84 lies on the accused, according to Section 105. Section 105 of Evidence Act may be quoted here as follows :

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions or proviso contained in any other part of the same code, or in any law defining the offence is upon him, and the court shall presume the absence of such circustances."

It has been laid down in a number of cases that in cases of insanity burden of proof lies on the accused.

Thus, in the case of *State* v. *Kartik Chandra*,[3] the court held that there is presumption of sanity until evidence to the contrary is proved. The law presumes every person at the age of discretion to be sane unless the contrary is proved and even if a lunatic has lucid intervals the law presumes the offence of such person to have been committed in a lucid interval, until, it has been proved that it was committed during the state of derangement.

A person is presumed to be responsible for his acts and the natural consequences thereof unless he affirmatively proves that he is entitled to exemption from criminal liability.[4]

In *Channabasappa* v. *State*,[5] the court held that a person is presumed to be sane, possessed of understanding as to what is right or wrong, to have sense enough to anticipate what will happen in certain cases. That is the rule and the burden of proving the exception is on those who rely on it.

In *State* v. *Emericiano Lemos*,[6] the court held that it is for the accused to discharge the burden of proof that he did not know the nature of the criminal acts committed by him.

There is a responsibility,[7] placed on the accused under Section 105 of Evidence Act to establish facts and circumstances to show that there was reasonable probability that at the time of commission of the offence of murder he was suffering from unsoundness of mind of the nature and degree mentioned in Section 84.

In *Kesheorao* v. *State of Maharashtra*,[8] the court reiterated the same proposition by saying that the burden of proving that his case is covered by Section 84 is on the accused.

Lala S.K. v. *State*,[9] is another case in which the court held that it is for the accused to prove his plea of insanity, though it is not necessary for him to adduce evidence of an affirmative nature to bring the case within the meaning of the exception provided by Section 84.

In the case of *Dahyabhai Chhaganbai Thakkar* v. *State of Gujarat*,[10] the Supreme Court laid down the doctrine of burden of proof in the context of the plea of insanity in the following propositions :

(i) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite *mens rea*, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(ii) There is rebuttable presumption that the accused was not insane when he committed the crime in the sense laid down by Section 84 of the I.P.C., the accused can rebute it by placing

before the court all relevant evidence, oral, documentary or circumstantial, but the burden of proof upon him is no high than that rests upon a party to civil proceedings.

(iii) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including *mens rea* of the accused and in that case, the court could be entitled to acquit the accused on the ground that the general burden of proof vesting on the prosecution was not discharged. Thus from the second proposition it very clearly follows that the burden of proving insanity lies on the accused.

According to Russel,[10] all persons who have reached the age of discretion (fourteen years) are presumed to be sane and criminally responsible and in cases where a person is subject to attacks of insanity has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed in the time of his distemper. It lies on the accused to prove that he was insane at the time of commission of an offence, so as not to be liable to punishment as a sane person.

According to Gaur,[11] Section 84 of the I.P.C. can no doubt be invoked by a person for nullifying the evidence adduced by the prosecution by establishing that he was at the relevant time incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. Now it is not for the prosecution to establish that a person who strikes another with a deadly weapon was incapable of knowing the nature of the act or of knowing that what he was doing was either wrong or contrary to law. Everyone is presumed to know the natural consequences of his act. Similarly everyone is presumed to know the law. These are not facts which the prosecution has to establish. It is for this reason that Section 105 of the Evidence Act places upon the accused person burden of proving the exception upon which he relies, as was held in the case of

Bhikari v. *State of U.P.*[12]

To lay burden of proof of insanity on the accused is in accordance with reason as observed by Rolf, B. in the case of *Layton*,[13] that every man committing an outrage on the person or property of another, must be in the first instance taken to be a responsible being. A man going about the whole world marrying, dealing and acting as if he were sane must be presumed to be sane till he proves the contrary. The question, therefore, would be, not whether, the prisoner was of sound mind, but whether he made out to their satisfaction that he was not of sound mind. For the purpose,[14] of obtaining the benefit of Section 84 the accused will have to establish the circumstances which alone will enable him to claim the said benefit.

To prove insanity the accused has to lead evidence and the burden lies on him to show that he was insane under Section 84 and did not knew that what he was doing was wrong or contrary to law as was held in the case of *Khageshwar Pujari* v. *State of Orissa*,[15] and also in *Nivrutti* v. *State of Maharashtra*.[16]

A review of these cases show that the burden of proving that the accused's case is covered by Section 84 is on him. Though the general burden of proving the offence of the accused is on the prosecution, if any doubt is created regarding the guilt of the accused, he gets the benefit if that doubt.

2. Quantum of Burden

Now the question for consideration is what is the standard or measure of burden that has to be discharged by the accused.

In criminal cases,[17] the burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. In *Woolmington* v. *Director of Public Prosecutions*,[18] the trial judge in a murder case relying on a statement made by Sir Michael Foster 1762 had told the jury that if the victim was proved to

have died as a result of the accused's act, the burden was on the accused to prove that there were circumstances which reduced the crime to manslaughter, or which showed that it was no crime at all but pure accident. On appeal to the House of Lords, this direction to the jury was held to be erroneous. The Lord Chancellor (Lord Sankey), said,

Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is not entitled to an acquittal. No matter what the charge or where the trial the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

The view taken in England and Australia is that if the accused raises a defence of insanity and fails to establish a balance of probability in favour of the plea, the jury should convict.

In India there is considerable controversy regarding the scope and extent of burden of proof. In order to appreciate this controversy on this point, Section 105 with illustration of Evidence Act may be quoted here where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the I.P.C. or within special exception or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

Illustration

(a) A, accused of murder, alleges that by reason of

unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

Let us now examine the extent and nature of burden of proof in the light of various cases decided by different High Courts.

According to Section 84, the accused is entitled to protection of insanity defence only if he was unable to understand the nature of the act or that what he was doing was wrong or contrary to law. According to Section 105 of the Evidence Act, if a person accused of an offence claims the protection of Section 84 will have the onus to prove the existence of circumstances that bring the case within the special exception. Now what is the extent of this burden.

In the case of *State* v. *Emericiano Lemos*,[19] it was laid down by the court that it is upon the prosecution to prove accused's guilt beyond reasonable doubt but there is a rebutable presumption that the accused was not insane and he can rebut this presumption by adducing evidence but the burden on the accused is not as heavy as on the prosecution at least not higher than that rests upon a party to a criminal proceedings.

Oyami Ayati v. *State*,[20] is another case on the point, where it was said that there is a rebuttable presumption that the accused was not insane when he committed the crime in the sense laid down by Section 84 I.P.C. The accused may rebut it by placing before the court all the relevant evidence, oral documentary or circumstantial but the burden of proof upon him is no higher than that which rests upon a party to criminal proceedings.

In *Kamla Singh* v. *State*,[21] the court held that the presumption under section 105 is rebuttable, if any fact sufficient to rebut the presumption has been proved by the defence and the moment that presumption is rebutted by the defence and the court is brought to a point where it becomes doubtful of the fact or when it can't positively hold that the prisoner was not then of unsound mind and was capable of

knowing the nature of the act alleged against him, the onus under Section 105 has to be taken as discharged, for by reason of the neutralisation of the force of presumption the prosecution is thrown back to its original position where it has to discharge its onus beyond reasonable doubt. The defence, therefore, has not to prove affirmatively beyond reasonable doubt that the person was of unsound mind and that by reason of unsoundness of mind was incapable of knowing the nature of the act. In other words, the defence has only to demolish the aforesaid presumption laid down against the accused under Section 105 and not to prove beyond reasonable doubt the opposite of that presumption.

In *Abdul Latif* v. *State of Assam*,[22] the court held that insanity may be established by the accused by preponderance of probabilities on the basis of some features gleaning from the conduct of the accused which point to a reasonable doubt that he had acted under circumstances set forth in Section 84.

In *Mitu Khadia v. State of Orissa*,[23] the court held that an accused person is not to prove his case beyond reasonable doubt and it is sufficient if his case established by preponderance of probabilities as in a civil case.

In *Nivrutti* v. *State of Maharashtra*,[24] the Court again repeated the same proposition that the burden on the accused is same as the one which a party in a civil proceeding has to discharge.

In *Kuttappan* v. *State of Kerala*,[25] the court held that the burden which rests on the accused is not higher than that which rests upon a party in a civil litigation. If the material placed before the court raises a reasonable doubt in the mind of the court whether the accused had the *mens rea* required for the offence, accused would be entitled to the benefit of doubt. In such an event the prosecution must be taken to have failed to prove the guilt of the accused beyond reasonable doubt.

If we review all the cases quoted above, three different propositions emerge.[26]

(1) The burden laid on the accused must be fully discharged by the accused by clear and cogent evidence. It would not be sufficient to create a doubt in the mind of the court about the quantum of insanity exculpating him from criminal responsibility. Where the evidence as to the state of mind pleaded is conflicting, he should be convicted because the burden of proving the defence lies on him, which in the case of conflicting evidence can't be said to be sufficiently discharged.

(2) If the evidence adduced fails to satisfy the court affirmatively, of the existence of circumstances bringing the case within the general exception pleaded, the accused person is still entitled to be acquitted if upon the consideration of the evidence as a whole, including the evidence given in support of the plea of the said general exception, a reasonable doubt is created in the mind of the court whether or not the accused person is entitled to the benefit of the said exception.

(3) Proof has not to be as meticulous as that required of the prosecution in demonstrating the guilt or the complicity of the accused. But, the accused must establish his insanity. He is not required to do it by evidence more cogent than a plaintiff or a defendant is required to give in a civil litigation. While the burden of proof may not got higher than that merely creating a doubt about sanity is not that proof.

The first view is obviously based on the literal meaning of Section 105 of the Indian Evidence Act, 1872 read with definition of the word "proved" as found in Section 3 of the said Act which says that :

A fact is said to be proved, when after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists.

According to this view the burden placed on the accused does not substantially differ from the burden placed on the prosecution, to establish its case. This view overlooks the cardinal rule of criminal law that the prosecution in addition to proving the case in accordance with the definition of the word "proved" will have to go further and prove its case beyond all reasonable doubt, whereas an accused has only to fulfil the definitional requirements of the word proved.

The second view taken in *Kamla Singh* v. *State*,[27] by the Patna H.C. and approved by the Supreme Court in Dahyabhai's case and reiterated in several other cases renders section 105 of the Indian Evidence Act superfluous. Subbrao J. has very lucidly summarised the doctrine of burden of proof in the context of the plea of insanity in the following proposition in Dahyabai's case :

(i) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with requisite *mens rea*. The burden of proving that always rests on the prosecution.

(ii) There is a rebuttable presumption that the accused was not insane when he committed the crime. He may rebut it by placing all the relevant evidence, oral documentary, circumstantial, but the burden of proof upon him is not higher than that rests upon a party in civil proceedings.

(iii) Even if the accused fails to establish conclusively his insanity at the time he committed the offence, the evidence placed by the accused or by the prosecution may raise a reasonable doubt as regards one or more of the ingredients of the offence, including *mens rea* and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

This judgment in Dahyabhai's case does not make a close scrutiny of the cases on the point, it simply relies on the Patna

view in Kamla Singh's case which it appears was arrived at on an incorrect reading of the three cases none of which deal with the plea of insanity. *Woolmington* v. *D.P.P.*; *Emperor* v. *Dampala*; and *Parbhoo* v. *Emperor*. These cases deal with other exceptions. Viscount, L.C. who delivered the judgment of the House of Lords in the Woolmington's case observed :

"M'Naghten's case stands by itself. It is the famous pronouncement on the law bearing on the question of insanity. It is quite exceptional and has nothing to do with the present circumstances. In M'Naghten's case the onus is exceptionally and definitely placed upon the accused to establish such a defence. The only general rule that can be laid down as to the evidence is that of insanity, if relied upon as a defence, must be established by the defendant. It is not necessary to refer to M'Naghten's case again in this judgment, for it has nothing to do with it.

In *Emperor* v. *Dampla*[28], Roberts, C.J. who delivered the opinion of the court, found the Woolmington doctrine in no way inconsistent with the law in British India in forming a valuable guide to the correct interpretation of Section 105 of the Indian Evidence Act, but observed :

It is unnecessary to decide any question relating to insanity in the present reference, and the effect of our decision in no way alters the existing law on the subject.

Similarly the Allahabad decision in *Parbhoo* v. *Emperor* does not deal with the defence of insanity.

A question may arise whether the words of Section 105 of the Indian Evidence Act justify any differentiation to be made between the plea of insanity and the pleas under other exceptions coming within the purview as regards the nature of the burden placed on the accused. The S.C. decision in Dahyabhai's case seems to have answered this question in the negative. It would be sufficient to say here that the view taken by Patna High Court and approved by Supreme Court is not

supported by the language of the Section 105 of the Indian Evidence Act.

It is not clear from the S.C. decision whether the acquittal is due to benefit of doubt on that the plea of insanity is taken as established. Although the judgment is progressive since it extols the dignity of the individual in criminal jurisprudence, it is likely to be misused as it would not be uncommon to raise doubts through flimsy grounds.

The third view that the burden of proof placed on an accused (taking plea of insanity) is the nature of the burden placed on a party in a civil litigation appears to be more rational. It does not ignore the requirements of Section 105 of the Indian Evidence Act, nor the definition of the word 'proved'. At the same time the burden in question is not made unduly heavy by requiring the accused to establish his defence beyond all reasonable doubt.

B. TOOLS OF PROOF OF INSANITY

The basic tenet of criminal law is that a person is presumed to be sane unless contrary is proved. Even if a person is insane, he has to prove his insanity in the court of law. Insanity can be proved with the help of expert evidence, i.e., evidence of doctor, who will examine the insane accused on the basis of material facts and by asking hypothetical questions.

(1) Expert Testimony

In this discussion we are concerned with the tools that are employed by an expert to adjudge insanity.

(*a*) *Tools of the Expert*

Evidence of expert is relevant to judge insanity. A qualified expert may testify to the accused's mental condition either upon personal examination or on the testimony in the case, if he has been in court and heard it all. He may also give his

opinion upon hypothetical cases propounded by the counsel.

(*i*) *Personal Examination* : An expert on insanity, who had made a personal examination of the accused after the commission of the offence, may tell about his mental condition at the time of examination, also about its probable duration and thus whether it may have existed at the time of the crime charged. He may also testify that the accused is feigning and simulating insanity.

(*ii*) *Expert Opinion Based on Evaluation of Material Facts* : It has been held in a case[29] that a medical witness might give general scientific evidence on the causes and symptoms of insanity but he must not express an opinion as to the result of the evidence he had heard with reference to the sanity or insanity of the prisoner. The question whether on given facts the prisoner should not be pronounced insane, is one of the facts which it is for the jury to decide and not for the medical witnesses to depose about. The proper function[30] of the medical witness as an expert is to give his opinion as to whether the facts proved furnish proof of the existence of delusion. He may be able to say by looking to the previous habit and mode of life whether there has been any change of habits or character indicative of insanity. An expert can give his opinion as to the state of prisoner's mind but not as to his responsibility which is again a matter for the judge or the jury to decide. In examining medical experts it must not be forgotten that the physician and jurists view insanity in relation to criminal responsibility from different stand-points. And the examination of a medical witness must therefore, be directed to elucidating points relevant from the stand-point of jurist.

It is the duty of the medical expert who is called to prove insanity of the accused at the time of the commission of the offence but who is sane at the time of the trial, to offer to keep the accused under his observation. He can't base his opinion on the summary of evidence at the trial supplied to him. For, if the expert were permitted to state his opinion, based on all the evidence, it would in case of disputed and conflicting

evidence require him to determine its truth and value and then make the scientific inference therefrom. However, where the facts are simple and undisputed and the question becomes consequently one of science only, an expert witness may be permitted to state his opinion based on the evidence without recapitulating the facts proved.

(*iii*) *Hypothetical Questions* : Witnesses qualified as experts in mental diseases may be asked their opinion upon hypothetical factual situations even though they have no personal knowledge of the accused what is required to be avoided is a facade of knowledge which cloaks a lack of information.

(C) EXPERT EVALUATION OF THE APPLICATION OF THE PARAMETERS OF INSANITY

The question of whether or not the illness was such as to satisfy the legal criterion or test is a legal issue on which the expert witness is not competent or qualified to speak. The legal inference from facts is a matter of judicial opinion and not of expert testimony. The reason for excluding such opinions is that these are the very questions that the court is to decide and the expert witnesses should not be allowed to usurp the function of the court. Some eminent psychiatric[31] and legal writers have supported this view. Thus, Mayne[32] has observed that in dealing with the evidence of medical witnesses, it must always be remembered that their function is to assist, not to supersede the judge. The medical witness states the existence, character and extent of the mental disease. The judge has to decide, or to guide the jury in deciding, whether the disease made out comes within the legal condition which justify the acquittal on the ground of insanity.

However, some cases have denied the soundness of this view. Thus, in the cases of *Kama Urang* v. *Emperor*[33] and *Onkar* v. *Emperor*,[34] the experts were also permitted to say if in their opinion the accused could distinguish right from wrong. In England also experts are permitted to say if in their opinion the accused knew what he was doing, and knew that it was wrong and to testify on the issue of insanity. In

most cases, relying on the plea of insanity, it is fairly easy to determine whether the accused was afflicted with some kind of mental disorder or was of sound mind. The difficult cases are those where it is admitted that the accused is to some extent abnormal, but where the question at issue is whether or not at the time of the act, he was so disordered mentally as to be incapable of knowing right from wrong. It is upon this question that the court needs the help of court to avoid conjectures.

D. EVALUATION OF THE EXPERT TESTIMONY

The court is not bound by the opinion of experts. The opinion of the medical witness howsoever eminent he may be, must not be read as conclusive of the fact of insanity which the court has to try. It should, however, analyse such opinions meticulously to accord them proper importance. Such opinions may be invited in exceptional circumstances, where there is no dispute as to facts or their interpretation but it must be considered by the court as nothing more than relevant.[35] In some cases medical opinion played an important role while in some other cases it did not.

Thus, in *Onkar Datt* v. *Emperor*,[36] the court while giving weight to expert opinion of Overbeck Wright observed that the opinion of the expert on lunacy can't be brushed aside upon the strength of the by opinion of the learned trial judge.

In the case of *Bazlur Rehman* v. *Emperor*,[37] Major Hodge's opinion was relied in reducing the sentence where the court observed : Though the appellant is guilty of an atrocious and dastardly murder in view of the evidence as to his mental condition at the time, and particularly the evidence of the civil surgeon this is a case in which a sentence of transportation for life will meet the ends of justice.

In *Karma Urang* v. *Emperor*,[38] much weight was attached to evidence of civil surgeon in allowing the appeal of the accused who observed that the appellant had definite delusion which passed off after a couple of months, that he could not

tell right from wrong, that he was definitely insane and said that he wanted to dedicate his father's head to the Goddess Kali.

In *Re Balagopal* (1976) Cr. L.J. 1978 the court held that the statement of the doctor was sufficient to substantiate the plea of insanity and there was every indication that the accused when he committed the murder by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law.

However, in the case of *Sukra Sa* v. *State of Orissa*,[39] not much weight was given to the civil surgeon who examined the accused and the court dismissed the appeal as it did not consider the case one to be covered by Section 84.

Similarly, in the case of *Queen* v. *Pursoram Doss*,[40] the court acquitted the deceased notwithstanding the contrary opinion of Dr. Russel, Civil Surgeon about the sanity of the accused.

In *Bagga* v. *Emperor*,[41] though the accused was found to be a 'raving lunatic' by the civil surgeon, the court held him liable.

In *Shivraj Singh* v. *State of M.P.*,[42] though the medical evidence showed that the accused was a patient of depressive psychosis the court dismissed the appeal of the accused.

However, uncontradicted expert testimony must be taken as controlling. But, it is a mistake to suppose that in order to satisfy a court that the plea of insanity is well founded, scientific evidence must be adduced. If the existence of facts is such as to indicate an unsound state of mind, that is quite sufficient.

A somewhat different ground for not giving controlling weight to expert testimony on insanity is that the legal concept of irresponsibility is different from the medical concept of mental disorder. But, while it is undoubtedly true that responsibility is a legal concept which must be determined by

social objectives rather than by medical data, we are more likely to obtain these objectives if our legal concepts are consonant with scientific facts.

E. NON-EXPERT TESTIMONY

Lay witnesses sufficiently acquainted with a person, whose sanity is in question, may give evidence as to his actions. The courts have not succeeded in formulating any definite rule as to how much opportunity or acquaintanciship is necessary. Non-expert testimony would include evidence of relations and friends who have observed the accused closely. However, no generalisation is possible the qualifications of each particular witness to give an opinion on another's mental condition rests in the discretion of the court. Thus, it was held in the case of *Hemu Bachar* v. *The State*,[43] that the evidence of insanity by near relations of the accused should be accepted with caution, specially when the accused acted as a normal man immediately after the crime. The witness must, however, precede or accompany his opinion with a statement of the facts and circumstances upon which it is founded.

F. RESIDUAL PARAMETERS

In addition to the evidence of experts and laymen, an accused's mental condition may be proved by circumstantial evidence. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the I.P.C. can only be established from the circumstances which preceded, attended and followed the crime. Whether there was deliberation and preparation for the act, whether it was done in a manner which showed a desire to secure concealment, whether after the crime, the offender showed consciousness of guilt and made efforts to avoid detection and whether after the arrest he offered false excuses and made false statements are factors which are to be taken into consideration by the court to determine insanity of the accused.

Residual parameters include the tests which are not covered by Section 84. Section 84 lays down only two tests by

which insanity of the accused is to be proved. But besides these two tests there are other yardsticks such as the conduct of the accused insanity in the family history of the accused and presence or absence of motive behind the offence by which alleged unsoundness of mind is to be adjudged.

(1) Conduct of the Accused

Conduct of the accused before at the time of commission of offence and after the occurrence is an important factor for determining insanity of the accused. Thus, behaviour of the accused, whether he was behaving rationally or irrationally prior to the act may be helpful in determining the mental state of the accused. Similarly, if the accused tries to escape after the commission of the alleged offence, it would raise an inference that he is not insane. Hiding or attempted escape immediately after the commission of crime has been viewed as a strong circumstance in deciding the question of insanity.

Thus, in *Prakash* v. *State of Maharashtra*,[44] the court held that to apply the provisions of Section 84 so as to relieve the person from criminal liability, it is well settled that the conduct of the accused preceding the act complained of as well as succeeding the act and also his conduct during the course of complained incident, all call for a close scrutiny. The record that prior to the actual incident, the accused was suffering from mental disorder and also he was treated for such mental disorder after the incident would certainly assist the court in coming to a proper conclusion.

It was satisfactorily shown that prior to the day of the incident, the accused was not keeping good mental health. He was subjected to fits of hallucinations as well as fits of violence. The conduct preceding, the conduct during and conduct succeeding the event clearly established that the accused must be under a fit of insanity. In the circumstances the accused was entitled to rely on Section 84.

However, hearsay testimony[45] that the accused had suffered a fit of insanity some 15 years back or that he made no

attempt to remove other incriminating evidence does not necessarily lead to the conclusion that he was of unsound mind.

In *Shivraj Singh* v. *State of M.P.*,[46] although the conduct of the accused prior to the alleged act was quite irrational but the court held that sheer abnormalities in behaviour can't be used as an umbrella to protect the offenders on the ground of insanity. Such abnormalities can well be pretended by the offenders as preconceived defence to their planned criminal act.

Similarly, the Rajasthan High Court in the case of *Chhagan* v. *State*[47] refused the protection of section 84 to the accused who was suffering from some giddiness and was not feeling well for a month or so immediately preceding the incident and was running after the village children or the cattle heads and held that all these facts do not establish that he was a person who would be called *non compos mentis*

In some cases however, abscondence or attempt to escape proved fatal to the plea of insanity.

Thus, in the case of *Queen* v. *Jugo Mohun Malo*,[48] the court held that attempt to escape showed that the accused know that his act was wrong one and that if caught, he would be punished for it. Similarly in the case of *Emperor* v. *Katay Kisan*,[49] the court held that the accused's conduct in running away and concealing himself in the house of a friend in another village immediately after he had wounded two men, seems to be a strong indication of the existence of a consciousness in his mind that he had done what was wrong. Similarly resisting arrest coupled with an attempt to escape after committing the crime has also been held as a circumstance regarding the plea of insanity.[50]

In the case of *B.S. Tanti* v. *State of Assam*,[51] the conduct of the accused in feeling away from the place of occurrence ruled out that he did not know the nature of his act, on the

contrary, he apprehended that prosecution witnesses would catch and punish him. The plea of insanity had to be rejected. However, in *Surju Masudi* v. *State of Bihar*, 1977 CRI. L.J. 1765, the accused was allowed appeal on the ground of insanity as his conduct prior and at the time of occurrence of the offence showed that he was insane and more over after committing the offence he did not run away from the place of occurrence, but quietly pointed towards the dead body.

In *Lalal S.K.* v. *State*,[52] the accused was convicted under Section 302 I.P.C. for committing the murder of one Mayin Ali. Plea of insanity was raised on behalf of the accused. However, the evidence on record clearly showed that he was not insane and that he was conscious of his property rights. It was further disclosed from the evidence that immediately after the occurrence, he had run away from the scene of occurrence, and was also seen to have washed away his garments and the stains from the hansa with water. He did all this obviously with a view to conceal evidence of the act done by him. He had threatened his persuers by saying that he had committed one murder and would do so if the chasers continued to run after him. This again indicated that he knew the nature of his act and was not insane. So, the court was right in dismissing his appeal.

2. Previous and Subsequent Insanity

Since mental disorder is usually not a phenomenon of a moment but requires some time to develop, it is competent to in order to prove the accused's responsibility or irresponsibility at the time of the crime, to introduce evidence of his mental condition before and after that time. The mere fact that the accused had been formerly subject to insane delusions or had suffered from derangement of the mind or that subsequently his behaviour was like a mentally deficient person or that he was in a bewildered state of mind a day or two before the day of occurrence is *per se* insufficient to bring his case within the exception.

Thus, in *Bagga* v. *Emperor*,[53] the Lahore High Court

observed that if a man was found to be insane six or seven hours after the commission of the offence it raised no presumption of insanity at that time.

The evidence that the accused had prior to the act or afterwards exhibited symptoms of insanity is relevant, though he may have been perfectly sane at the time of the trial for the question to be considered is the state of accused's mind at the time of the act and not his state of mind at the time of the trial, though the latter fact is also relevant for the purpose of procedure.

However, while considering whether the accused was insane when he committed the act, a fit of insanity which he had suffered some fifteen years before the act is irrelevant.[54]

In all cases, where previous insanity is proved or admitted a presumption of sanity at the time of commission of the act would be greatly weakened. However, relevant evidence in such a case is

(1) previous confinement in a mental institution;

(2) treatment for insanity;

(3) a decision by a civil court; or

(4) a preliminary finding by the criminal court at the time of trial.

Thus, in *Kashiram* v. *State*,[55] the accused's persistent delusion of wifely persecution, coupled with his previous insanity established conclusively that the accused was in other respects completely and utterly insane and who had glimmering knowledge of the nature and consequences of his act in striking his wife with an axe, was absolutely incapable of realising that it was wrong or contrary to law.

(3) Hereditary Perspective as a Parameter

The mere fact that the conduct of the accused had been of late in some respects[56] unusual and that his father was insane

were in one case held to be insufficient to establish the exception, these facts by themselves would be insufficient to establish insanity in any case. But, though insufficient, they are not irrelevant, and indeed, in an inquiry touching the accused's mind at the time of the act there can be nothing irrelevant that relates to his physical and mental history. For this purpose, evidence as to insanity in his parents, and collaterals is relevant as not affording independent proof of his insanity but as corroborative of other testimony as to the insanity of the accused. In other words, evidence of ancestral insanity is corroborative of the evidence of the accused's insanitiy.

(4) Motive as a Parameter

Generally crimes are committed with some or the other motive. But, in cases of insanity, the accused person may commit an offence without any motive and absence or presence of motive will affect the trial and punishment of the accused. However, the court has to see the sufficiency or insufficiency of motive.

In the cese of *Ambi* v. *State of Kerala*,[57] it was held that insufficiency or absence of motive is not in itself sufficient evidence of legal insanity. But it is an important factor, to be taken into consideration together with other facts and circumstances of the case in determining the accused's state of mind.[58]

Absence of sane motive is one of the indicia of the act being done by some kind of insane impulse presumably unmotivated and pointless offence would carry considerable weight in support of a plea of insanity even though at first sight the plea may appear unsubstantial.

However, in the absence of other evidence were want of motive is not enough to support an inference of unsoundness of mind as has been held in the case of *Jailal* v. *Delhi Administration*[59] and *S.W. Mohemmad* v. *State of Maharashtra*.[60] Mere absence of motive is not proof of insanity, but if there

is other evidence of insanity, such a fact may be of importance as helping to prove insanity. Thus, absence of all motive, when corroborated by independent evidence as to previous insanity of the accused has been held to be not ineffective. Also, the circumstances of an act of murder being apparently motiveless are not a ground to induce the inference of the existence of a powerful and irresistible influence or homicidal tendency. A total black of apparent motive, may however, in some cases along with other facts give rise to an inference that the act was done under an insane impulse. Thus, in the case of *In the matter of Lakshmanan*,[61] the accused was insane for some months prior to the occurrence and was not completely cured and was on cordial terms with his wife, mercilessly stabbed her without any motive by a chisal in broad day light and after committing the crime made no attempt at secrecy or to run away, it was held that he was of unsound mind at the time of the act and was entitled to the protection of Section 84.

Satwant Singh v. *State of Punjab*[62] is another case on the point. In this case the appellant accused attacked the deceased with a Kassi without any motive and under the influence of a fit of major epilepsy and caused his instantaneous death, it was held that the accused was insane and was entitled to the protection of Section 84.

In *Balagopal*,[63] the accused committed the murders of his wife and his son by cutting them with a knife for no apparent reason or motive. The evidence of doctor also showed that the accused was not in a position to understand the nature of his act or that what he was doing was either wrong or contrary to law.

In *Abdul Latif* v. *State of Assam*,[65] the accused held that absence of motive shows that the accused was insane at the crucial time of offence, and was incapable of understanding the nature of his act as when he was asked about the deceased girl he replied that he had sent her God. So he was entitled to the benefit of Section 84.

Similarly in *Khageshwar Pujari* v. *State of Orissa*,[65] the accused was charged with the murder of his own daughter aged 2½ years. The learned counsel for the accused raised the plea of insanity. The court held that as there was no motive to be found for the offence and unless the accused was suffering from some abnormality it was not expected of him to have behaved like that and kill his own daughter. At the crucial point of time the accused was not in a fit mental condition and was insane within the meaning of Section 84. Hence the order of conviction and sentence passed against the appellant was not sustainable in law.

In *Machi Parvaiah* v. *The State of Andhra Pradesh*,[66] the accused killed his mother without any apparent motive and did not make any attempt to abscond or hide his weapons but instead started weeping for his mother with other relations. It was held that Section 84 was applicable and the accused could not be convicted of murder.

Although, absence of any motive for the crime does not necessarily lead to an inference of insanity, it is a circumstance that may be considered while awarding punishment.

Thus, in *State* v. *Dhanna Ram*,[67] absence of motive proved helpful in reducing the punishment, from death to that of life imprisonment.

Motive is a determining factor of lunacy of the accused for sudden, spontaneous, unmotivated violence is more likely to be the result of a disordered mind than more carefully contrieved or premeditated crimes.

NOTES AND REFERENCES

1. Batuk Lal, The Law of Evidence, Ninth Ed., p. 289.
2. *Narain* v. *Gopal*, AIR 1960, SC 100.
3. AIR 1951 Ass. 79,82.
4. AIR 1970 M.P. 102, *Barelal* v. *State*.
5. AIR 1957, Mys. 68.
6. AIR 1970 Gao. 1.

7. *State* v. *Lilanand Pathak*, CRI. L.J. 513.
8. 1979 CRI. L.J. 403.
9. (1965) 2 S.C.J. 531.
10. Russel on Crime, 10th Ed., p. 45.
11. Hari Singh Gaur's Penal Law of India, 10th Edition, p. 617.
12. AIR 1966 SC I. See also the case of *Pancha* v. *Emperor*, AIR 1932 All; *Mohemmad* v. *Emperor*, AIR 1940 Sind 161; *Kalicharan* v. *Emperor*, AIR 1948 Nag. 20, 22; *Deorao* v. *Emperor*, AIR 1946 Nag. 321; and *Hemu Bechai* v. *State*, AIR 1951, San. 19.
13. 4 Cox C.C. 149.
14. *Shanti Devi* v. *State*, AIR 1968 Delhi.
15. 1984 CRI. L.J. 1108.
16. 1985 CRI. L.J. 449.
17. Richard Eggleston, Evidence, Proof and Probability (1978), p. 89.
18. (1935) A.C. 462.
19. *Supra*, note 6.
20. AIR 1974 SC 216.
21. AIR 1955 SC 209. See also *Suraj Masandi* v. *State of Bihar*, 1977 Cr. L.J. 1765.
22. 1981 CRI. L.J. 1205.
23. 1983 CRI. L.J. 1385; See also *Lala S.K.* v. *State*, 1983, Cr. L.J. 1675.
24. 1985 CRI. L.J. 449.
25. 1986 CRI. L.J. 271.
26. K.M. Sharma, *Supra*, note 23 of Chap. 4, p. 368.
27. AIR 1955 Pat. 209.
28. AIR 1941 Rengoon 83.
29. *Doe* v. *Bain Bridge*, 4 Cox C.C. 454.
30. See *supra*, note 11.
31. Dession : Psychiatry and the Conditioning of Criminal Justice, 47 Yale L.J. 319 (1938).
32. Criminal Law of India 181 4th Ed.
33. AIR 1928 Cal. 238.
34. AIR 1935 Oudh 143.
35. *Baswaatrao Baji Rao* v. *Emperor*, AIR 1949 Nag. 667.
36. See *supra*, note 35.
37. AIR 1929 Calcutta 1.
38. See *supra*, note 34.
39. 1973 CRI. L.J., p. 1323
40. (1867) 7 W.R. 42.
41. (1931) 32 CRI. L.J. 1230.
42. (1975) CRI. L.J. 1458.
43. AIR 1951 Sau.
44. 1985 CRI. L.J. 196.
45. *The State* v. *Laldin*, 1973 CRI. L.J. 929.
46. *Supra*, note 4.

47. 1976 CRI. L.J. 671.
48. (1875) 24 W.R. 5.
49. (1924) I CRI. L.J. 854.
50. *Bazlur Rehman* v. *Emperor*, AIR 1929 Cal. 1.
51. 1977 CRI L.J. 296.
52. 1983, CRI. L.J. 1675.
53. *Bagga* v. *Emperor*, (1981) 32 CRI. L.J. 1230.
54. The *State* v. *Laldin*, 1973 CRI L.J. 1929. See also *State* v. *Koli Jeram*, AIR 1955 San. (105).
55. AIR 1957 M.B. 104.
56. *Hemu Bechar* v. *The State*.
57. (1962) 2 CRI. L.J. 135.
58. *Narain Sahi* v. *Emperor* 1947 Pat. 222.
59. AIR 1969 SC 15.
60. 1972 CRI. L.J. 1523.
61. 1973 CRI. L.J. 110.
62. 1975 CRI. L.J. 1605.
63. 1976 CRI. L.J. 1978.
64. 1981 CRI L.J. 1205.
65. 1984 CRI L.J. 1108.
66. 1985 CRI. L.J. 1824.
67. 1974 CRI. L.J. 1123.

6

CONCLUSIONS AND SUGGESTIONS

The peresent work is a brief survey of the defence of insanity in Indian Criminal Law from 1860 to 1986. The defence of insanity has been examined in its historical perspective[1] and the underlying philosophical assumptions of the relevant provisions of the Indian Penal Code have also been examined. The problem of insanity has assumed a new significance due to developments in modern scientific thought reflected in Freudian and post-Freudian psychology.

Not much historical data concerning plea of insanity in Ancient Hindu literature and Mohemmedan jurisprudence is available, though there are some stray references. The foregoing analysis examined the two tests, nature of the act and the right and wrong test adopted by the courts while interpreting Section 84 and pointed out the unfavourable social implications of the third test laid down by the Calcutta High Court.

It would, therefore, be more appropriate here to make some conclusions and suggestions on the basis of the above work.

1. The Indian law continue to recognise the traditional M'Naghten Rules where only the impairment of the defendant's knowledge is taken into account, there is no inquiry into the degree to which the defendant's self-control is impaired. The only criterion for conviction of the defendent is his awareness of what he was doing and that his act was evil though he might be suffering from a severe mental illness.

England where the M'Naghten Rules were first born has modified them no attempt has been made in India to soften their rigour. Lord Devlin supported the retention of the M'Naghten Rules on the ground that criticism levelled against them should really be directed to those circumstances which are not a part of the rules. These circumstances are automatic death sentence and indefinite detention in a lunatic asylum. Stripped of these illogical encrustations or excrescences, these rules according to Lord Devlin, can be seen as a significant clause in the individual's charter of liberty.

This does not mean that the judicial opinion in India is not conscious of the need of reorientation of the law on the subject. As early as in 1896, the Calcutta High Court in the case of *Queen Empress* v. *Kader Nasyer Shah*,[2] though admitting that insanity affects emotions and will also felt constrained to administer the law as it existed. And, in the case of *Wazir Chand* v. *Emperor* the Oudh Chief Court lamented, "Though a century has elapsed, during which the science of psychology has made great advances the law as then laid down has remained unmodified." In *State* v. *Chhotelal* Madhya Pradesh High Court has observed : with the development of psychiatry as a recognised branch of medical science, we may have to revise our opinion regarding what constitutes unsoundness of mind for the purpose of Section 84 as laid down in some of the old cases.

It seems fairly clear therefore that what is required now is not necessarily the abrogation of the M'Naghten Rules by a statute but a more flexible sentencing policy which would allow the courts to dispose off the accused in a manner most appropriate to the offence and his mental state. This can be done by adding an exception to Section 300 of the I.P.C. to the effect that in cases falling short of the M'Naghten's insanity, the murder would be culpable homicide not amounting to murder. The judiciary would thus be aimed with a power to recognise the border-line cases of insanity and take into account the variations in human behaviour which have infinite ramification.

2. A review of some illustrative cases[3] showed that a wide

gap exists between mental illness as a medical fact and legal insanity as a casuistic formula. The fact of moral, mental or educational deficiency is not permitted to excuse an offence, however, some High Courts have regarded it as a mitigating circumstance while awarding punishment. This legal conundrum of right and wrong tests of insanity is one of the most striking instances of conservatism of the law. These concepts distinctly belong to ethics and present no scientifically cognizable categories. Ethical principles themselves being in a state of continuous transformation, hardly can be used as a precise criteria for legal analysis of human behaviour. There is no universal, standard of right and wrong and hence of responsibility. There are great differences of opinion for instance amongst sects and nations on the subject of polygamy and polyandry or even promiscuity, the things are said to die of remorse when prevented from killing the requisite number of human beings deemed necessary to secure nirvana or immortal bliss. It is more difficult for an individual to distinguish right from wrong in the complex social context of today than it was in a simple homogeneous society of the past, when cultural values were relatively uniform. Except in cases of gross moral turpitude where there could be said to be a social consensus on ethical evaluation there is still a large part of human conduct in which the ethical assessment by the society is not clearly defined. The test of right and wrong can't be dependable one in these areas of umbra and penumbra of moral assessment.

It is, therefore, necessary for the courts to devise a new test for adjudging the insanity of the accused which has a more uniform application than the present test. Such test should cover not only the legal aspect of the test but the moral aspect as well.

3. Insanity is a word of wider connotation, and has different meanings in different contexts. There is a difference between the legal and medical meaning of the term insanity. Since modern psychiatry recognises gradations of disturbance from the normal to abnormal juristic thinking should be no less elastic in its approach to the problem of responsibility. The

Indian Criminal Law of insanity is at least a century out of date. It incorporates the faculty of psychology of the early nineteeth century which conceived of the brain as a bundle of functions each working independently. The rule that has thus come down to us is an over-intellectualised concept of mental disorder, neglecting volitional and emotional aspects of these disorders. There is ample confirmation of the idea that responsibility implies reasonable integration of the total personality which includes emotions as well as instincts. Medical psychology teaches us that mind can't be split into autonomously functioning compartments like knowing, willing and feeling. The mind and body are one continuum in which each part influences the other and is influenced by the whole. These functions are closely interlinked and interdependent.

The consequences of the present law is that every case where insanity has been pleaded as a defence has to be fitted into the strait jacket of Section 84 notwithstanding the current advances of psychiatric knowledge.

4. The Indian law on insanity does not make an allowance for irresistible impulse. If the accused commits an offence under an uncontrollable impulse resulting from mental disease, and which at the time and place of the alleged offence exists to such a high degree that it overwhelms his reason, judgment and conscience and his power to properly percieve, the difference between right and wrong side of the alleged wrongful act, this would be suitable defence of insanity.

But on the other hand where the accused is sane enough to percieve the difference between right and wrong with respect to the act committed and knew it as wrong, then the mere fact that an alleged irresistible or emotional impulse constrained him to commit the act will not amount to a defence from criminal liability.

The underlying reason for exemption of an insane person from liability for the commission of an offence is that the sane has a free will and can choose for himself while the insane man has no freedom of choice. If he can't distinguish between

right and wrong, the freedom of will and intent are certainly lacking. But it is not as certainly lacking in a case where the poor victim is seized with an irresistible influence which impels him to do something which if his will were free, he would not do. In either case, the fundamental element of freedom of will is not present because of its absence criminal intent is lacking in both. The law should not hold a man guilty under such circumstances. Even under the assailable concept of freedom of will the exclusion of the defence of irresistible impulse is open to criticism.

5. Difficulties start with the very controversial expression "unsoundness of mind". It is used in different contexts at different places with so many diverse and contradictory meanings that it becomes practically useless as an effective symbol. Difficulties arise because unsoundness of mind has a lay meaning, a medical meaning and all of these differ considerably. The lay meaning is vague and may connote anything from accentric conduct to raving madness. Medical men do not agree upon a definition of unsoundness of mind for legal purposes. And courts are aware that not every kind of unsoundness of mind has legal significance.

The difficulties in using the term as a tool in accurate thinking have become so pronounced and well recognised that this expression should be discharged. We need a new term to denote the particular kind or degree of insanity or mental disorder which produces legal consequences. The problem is thus to connect the physicians diagnosis of the mental condition of a particular individual with the legal lists of criminal responsibility.

Some basic standard is needed to measure and categorise mental disorders. This basic standard would, of course, be the normal mind. The obvious difficulty with this standard is that it is in itself is very little understood and is practically incapable of definition. Normalcy of mind is a kind of reasonable standard through which it is possible to determine whether the person concerned had acquired the ability to distinguish between right and wrong as a measure of all normal human

action in particular society.

6. The two important problems of the nature and extent of burden of proof to establish insanity have been examined in the light of Supreme Court decisions.[4] However, these cases do not seem to be clear on the point whether the acquittal is due to the benefit of doubt or that the plea of insanity is assumed to be established.

7. Looking to the magnitude of the problem a commission consisting of members of all the three branches of law and of the medical profession and behavioural scientists should be set up to examine the possibility of introducing such changes in the existing law of insanity as would make it reflect the modern advances of medical knowledge which have brought to light that loss of free will may not be due only to the lack of reason but also to forms of biological and psychological imbalance over which the accused could have no control.

Notes and References

1. See Chapter 1.
2. (1896) I.L.R. 23 Cal. 604.
3. See Chapter 3.
4. See Chapter 5.

TABLE OF CASES

INDIAN CASES

FOREIGN CASES

BIBLIOGRAPHY

Burdick, Law of Crimes, Vol. I.

Batuk Lal, The Law of Evidence; Allahabad, (1982).

Cross and Jones, Introduction to Criminal Law, Butterworths, London, (1972).

Eggleston, Richard, Evidence, Proof and Probability; Weidemfeld and Nicolson; London, (1978).

Freedman, Kaplan and Sadock, Modern Synopsis of Comprehensive Text-book of Psychiatry, (1964).

Freedman, Law in the Changing Society : Abridged Edition, (1970).

Gaur Dr. H.S., Penal Law of India; Allahabad, (1982).

Huda, Shamsul, Principles of the Law of Crimes in British India, Eastern Book Co., Lal Bagh, Lucknow, (1982).

Hallack, Seymour L., Psychiatry and the Dilemmas of Crime; Harper and Row Publishers, New York, (1967).

Hall, Jerome, Kane, Principles of Criminal Law; Bobus and Merill Co., 2nd Ed. History of Dharmashastra, (1953).

Kenny, Outlines of Criminal Law, Cambridge University Press, (1966).

Mayne, Criminal Law of India; 4th Edition.

Modi, A Text-book of Medical Jurisprudence and Texicology, 16th Ed., (1967).

Paul, Radha Binod, The History of Hindu Law (1958).

Taylor, Principles and Practice of Medical Jurisprudence, J. and A. Churchill Ltd. London, (1965).

Williams, Glanville, A Text-book of Criminal Law, Stevens and Sons, London, (1978).

Articles

1. *Boparai*, Insanity Under the Indian Penal Code : A Plea for Change; Criminal Law Journal, 1976.
2. *Diamond, Bernard L.*, Criminal Responsibility of the

Mentally Ill, Stanford Law Review, Dec., 1961.

3. *Dession*, Psychiatry and the Conditioning of Criminal Justice, Yale Law Journal, 1938.
4. *Mackay, R.D.*, Non-Organic Automatism : Some Recent Developments, Criminal Law Review June, 1980.
5. *Rollins*, Dr. H.R. Crime and Mental Disorder Daniel M'Naghten : A Case in Point, Medico Legal Journal Part III 1982.
6. *Singh, Gurpal*, Doctrine of Irresistible Impulse (1974-75), Punjab University, Law Review, Vol. (24-27).
7. *Sharma, K.M.*, Defence of Insanity in Indian Criminal Law, Journal of Indian Law Institute, Vol. 7, 1965.
8. *What is new in Law*, American Bar Association Journal December, 1978.

INDEX